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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KABINS FAMILY LIMITED  
PARTNERSHIP, a Nevada limited  
partnership; LORI C. KABINS, as trustee for  
the LORI C. KABINS SEPARATE  
PROPERTY TRUST, a Nevada trust,

Plaintiffs,

v.

CHAIN CONSORTIUM, a Nevada general  
partnership; 3900, LLC, a Nevada limited-  
liability company; 99TH & INDIAN  
SCHOOL, LLC, a Nevada limited-liability  
company; 99TH & INDIAN SCHOOL  
MANAGEMENT, LLC, a Nevada limited-  
liability company; BENESSERE, LLC, a  
Nevada limited-liability company;  
BENESSERE MANAGEMENT, LLC, a  
Nevada limited-liability company; TODD W.  
BERGMAN, an individual; BUCKEYE

Case No.: 2:09-CV-1125

**COMPLAINT**

**(Jury Trial Demanded)**

1 CANAMEX 77 ONE, LLC, a Nevada limited-  
2 liability company; BUCKEYE 80 WEST  
3 THREE, LLC, a Nevada limited-liability  
4 company; CAPRI I, LLC, a Nevada limited-  
5 liability company; CAPRI II, LLC, a Nevada  
6 limited-liability company; JEFF CHAIN, an  
7 individual; LINDA CHAIN, an individual;  
8 JEFF AND LINDA CHAIN, as trustees for the  
9 JEFF & LINDA CHAIN FAMILY TRUST, a  
10 Nevada trust; CIPRIANI, LLC, a Nevada  
11 limited-liability company; CIPRIANI  
12 MANAGEMENT, LLC, a Nevada limited-  
13 liability company; COTTONWOOD RETAIL,  
14 LLC, a Nevada limited-liability company;  
15 GEIII, LLC, also known as GE III, LLC, a  
16 Nevada limited-liability company; GILA  
17 BEND 384, LLC, a Nevada limited-liability  
18 company; EDWARD GUTZMAN III, an  
19 individual; INNOVATIVE ASSETS, LLC, a  
20 Nevada limited-liability company; J.  
21 MATTHEW KAMMEYER, an individual;  
22 KAN INVESTMENTS, LLC, a Nevada  
limited-liability company; GABRIEL  
MARTINEZ, ESQ, an individual;  
MICHAEL'S PLAZA, LLC, a Nevada  
limited-liability company; MILLENNIUM  
CONSTRUCTION, INC. doing business as  
MCI, a Nevada corporation; MILLENNIUM  
COMMERCIAL PROPERTIES, LLC, a  
Nevada limited-liability company;  
MILLENNIUM PROPERTIES &  
DEVELOPMENT, INC. a Nevada  
corporation; MODERN MANAGEMENT,  
INC. a Nevada corporation; PHOENIX 83RD,  
LLC, a Nevada limited-liability company;  
ALLYN F. POVILAITIS, also known as  
ALLYN F. POVILATIS, an individual;  
RCRE, LLC, a Nevada limited-liability  
company; and T.W.B. ENTERPRISES, INC.,  
a Nevada corporation,

Defendants.



**VENUE**

5. Venue is proper in this judicial district under 28 U.S.C. §1391(c) and 28 U.S.C. §1391(b)(3), because Defendants are subject to personal jurisdiction in this judicial district and thus are deemed to reside in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. §1391(b)(2) because a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this judicial district.

**PARTIES**

7. Kabins LP is a limited partnership organized under the laws of the state of Nevada, with its primary office location in Nevada. Kabins LP's general partner is MBK LLC, which is managed by Mark B. Kabins, M.D. ("Dr. Kabins").

8. Dr. Kabins is an orthopedic spinal surgeon practicing medicine in various office- and hospital-based locations within and around Las Vegas, Nevada ("Dr. Kabins' Place of Business").

9. Kabins LP specifically holds Kabins' investments in Gila Bend 384 LLC, Michael's Plaza LLC, and 99th & Indian School, LLC.

10. LCK Trust is a trust established under the laws of the state of Nevada. Lori C. Kabins is the trustee of LCK Trust.

11. LCK Trust specifically holds Kabins' investments in Benessere LLC (formerly Buckeye Canamex 77 One, LLC), Cipriani LLC (formerly Buckeye 80 West Three, LLC), Capri I LLC, and Cottonwood Retail LLC.

1  
2       A.     *Defendants and Relevant Direct Relationships*

3       12. 3900, LLC (“3900”) is an active Nevada domestic limited-liability company.

4       13. 3900 is in fact actively and was in fact historically managed by Modern Management,  
5 Inc. (“Modern Management”) and Jeff Chain (“Mr. Chain”).

6       14. Records maintained by the Nevada Secretary of State indicate that 3900 is actively and  
7 was historically managed by Modern Management.

8       15. 99th & Indian School, LLC (“99th LLC”) is an active Nevada domestic limited-liability  
9 company.

10       16. 99th LLC is in fact actively and was in fact historically managed by 99th & Indian  
11 School Management, LLC (“99th Management”) and Mr. Chain.

12       17. Records maintained by the Nevada Secretary of State indicate that 99th LLC is actively  
13 and was historically managed by 99th Management.

14       18. 99th Management is an active Nevada domestic limited-liability company.

15       19. 99th Management is in fact actively and historically managed by Gabriel Martinez, Esq.  
16 (“Mr. Martinez”), GEIII LLC, also known as GE III LLC (“GEIII”), Innovative Assets, LLC  
17 (“Innovative”), and Mr. Chain.

18       20. Records maintained by the Nevada Secretary of State indicate that 99th Management is  
19 actively and was historically managed by Mr. Martinez, GEIII, and Innovative.

20       21. 99th Management and Mr. Chain are in fact actively and were in fact historically  
21 managers of 99th LLC.  
22

1 22. Records maintained by the Nevada Secretary of State indicate that 99th Management is  
2 actively and was historically a manager of 99th LLC.

3 23. Benessere, LLC (“Benessere”) is an active Nevada domestic limited-liability company.

4 24. Benessere is in fact actively and historically managed by Mr. Chain and Benessere  
5 Management, LLC (“Benessere Management”).

6 25. Records maintained by the Nevada Secretary of State indicate that Benessere is actively  
7 and was historically managed by Benessere Management.

8 26. Benessere Management is an active Nevada domestic limited-liability company.

9 27. Benessere Management is in fact actively and historically managed by Mr. Chain and  
10 Edward Gutzman III (“Mr. Gutzman”).

11 28. Records maintained by the Nevada Secretary of State indicate that Benessere  
12 Management is actively and was historically managed by Mr. Gutzman.

13 29. Benessere Management was historically managed by Mr. Chain.

14 30. Records maintained by the Nevada Secretary of State indicate that Benessere  
15 Management was historically managed by Mr. Chain.

16 31. Benessere Management was in fact historically managed by Innovative.

17 32. Records maintained by the Nevada Secretary of State indicate that Benessere  
18 Management was historically managed by Innovative.

19 33. Benessere Management was in fact managed by Millennium Properties & Development,  
20 Inc. (“Millennium”).

21 34. Records maintained by the Nevada Secretary of State indicate that Benessere  
22 Management was in fact managed by Millennium.

1 35. Benessere Management and Mr. Chain are in fact actively and were in fact historically  
2 managers of Benessere.

3 36. Records maintained by the Nevada Secretary of State indicate that Benessere  
4 Management is actively and was historically a manager of Benessere.

5 37. Benessere Management and Mr. Chain are in fact actively managers of Buckeye  
6 Canamex 77 One, LLC ("Buckeye 77").

7 38. Records maintained by the Nevada Secretary of State indicate that Benessere  
8 Management is actively a manager of Buckeye 77.

9 39. Todd W. Bergman ("Mr. Bergman") is a Nevada resident.

10 40. Bergman is in fact actively and historically the director, president, secretary, and  
11 treasurer of T.W.B. Enterprises, Inc. ("T.W.B.")

12 41. Records maintained by the Nevada Secretary of State indicate that Bergman is actively  
13 and was historically the director, president, secretary, and treasurer of T.W.B.

14 42. Buckeye 77 is an active Nevada domestic limited-liability company which merged into  
15 Benessere LLC.

16 43. Buckeye 77 is in fact actively managed by Mr. Chain and Benessere Management.

17 44. Records maintained by the Nevada Secretary of State indicate that Buckeye 77 is actively  
18 managed by Benessere Management.

19 45. Buckeye 77 was in fact historically managed by Mr. Chain, GEIII, and Innovative.

20 46. Records maintained by the Nevada Secretary of State indicate that Buckeye 77 was  
21 historically managed by GEIII and Innovative.  
22

1 47. Buckeye 80 West Three, LLC (“Buckeye 80”) is a merge-dissolved Nevada domestic  
2 limited-liability company, which merged into Cipriani LLC (“Cipriani”).

3 48. Buckeye 80 is in fact actively managed by Mr. Chain and Cipriani Management, LLC  
4 (“Cipriani Management”).

5 49. Records maintained by the Nevada Secretary of State indicate that Buckeye 80 was last  
6 actively managed by Cipriani Management.

7 50. Buckeye 80 was in fact historically managed by Mr. Chain and GEIII, and Innovative.

8 51. Records maintained by the Nevada Secretary of State indicate that Buckeye 80 was  
9 historically managed by GEIII and Innovative.

10 52. Capri I, LLC (“Capri I”) is an active Nevada domestic limited-liability company.

11 53. Capri is in fact actively and historically managed by Mr. Chain and Phoenix 83rd, LLC  
12 (“Phoenix 83rd”).

13 54. Records maintained by the Nevada Secretary of State indicate that Capri I is actively and  
14 was historically managed by Phoenix 83rd.

15 55. Capri II, LLC (“Capri II”) is an active Nevada domestic limited-liability company.

16 56. Capri II is in fact actively and was in fact historically managed by Mr. Chain and Phoenix  
17 83rd.

18 57. Records maintained by the Nevada Secretary of State indicate that Capri II is actively and  
19 was historically managed by Phoenix 83rd.

20 58. Mr. Chain is a Nevada resident.

21 59. Mr. Chain was historically a manager of Benessere Management.  
22



1 60. Records maintained by the Nevada Secretary of State indicate that Mr. Chain was  
2 historically a manager of Benessere Management.

3 61. Mr. Chain is in fact actively and was in fact historically a manager of Michael's Plaza  
4 LLC ("Michael's").

5 62. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
6 and was historically a manager of Michael's.

7 63. Mr. Chain is in fact actively the director of Millennium.

8 64. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
9 the director of Millennium.

10 65. Mr. Chain is in fact actively and was in fact historically a director and the president,  
11 secretary, and treasurer of Millennium.

12 66. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
13 and was historically the president, secretary, and treasurer of Millennium.

14 67. Mr. Chain is in fact actively the director, president, and treasurer of Modern  
15 Management.

16 68. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
17 the director, president, and treasurer of Modern Management.

18 69. Mr. Chain is in fact actively and was in fact historically the secretary of Modern  
19 Management.

20 70. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
21 and was historically the secretary of Modern Management.

22 71. Mr. Chain is a trustee of the Jeff & Linda Chain Family Trust ("JLC Trust").

1 72. Mrs. Chain is a Nevada resident.

2 73. Mrs. Chain is a trustee of the JLC Trust.

3 74. Mrs. Chain was historically a director of Millennium.

4 75. Records maintained by the Nevada Secretary of State indicate that Mrs. Chain was  
5 historically a director of Millennium.

6 76. Chain Consortium is a Nevada general partnership organized under Nevada law.

7 77. Chain Consortium's general partners are the following individual Defendants: Mr.  
8 Bergman, Mr. Chain, Mrs. Chain, Allyn Povilaitis ("Mr. Povilaitis"), Mr. Gutzman, Mr.  
9 Martinez, and J. Matthew Kammeyer ("Mr. Kammeyer").

10 78. Cipriani, LLC ("Cipriani") is an active Nevada domestic limited-liability company.

11 79. Cipriani is in fact actively managed by Mr. Chain and Dana Corbo, Esq. ("Mr. Corbo"),  
12 Mr. Gutzman, and Ram Janga ("Mr. Janga").

13 80. Records maintained by the Nevada Secretary of State indicate that Cipriani is actively  
14 managed by Mr. Corbo, Mr. Gutzman, and Mr. Janga.

15 81. Cipriani was in fact historically managed by Mr. Chain and Cipriani Management.

16 82. Records maintained by the Nevada Secretary of State indicate that Cipriani was  
17 historically managed by Cipriani Management.

18 83. Cipriani Management is an active Nevada domestic limited-liability company.

19 84. Cipriani Management is in fact actively and was in fact historically managed by Mr.  
20 Chain and Mr. Gutzman.

21 85. Records maintained by the Nevada Secretary of State indicate that Cipriani Management  
22 is actively and was historically managed by Mr. Gutzman.

1 86. Cipriani Management and Mr. Chain are in fact actively and historically managers of  
2 Buckeye 80.

3 87. Records maintained by the Nevada Secretary of State indicate that Cipriani Management  
4 is actively and was historically the manager of Buckeye 80.

5 88. Cipriani Management was historically the manager of Cipriani.

6 89. Records maintained by the Nevada Secretary of State indicate that Cipriani Management  
7 was historically the manager of Cipriani.

8 90. Cottonwood Retail, LLC ("Cottonwood") is an active Nevada domestic limited-liability  
9 company.

10 91. Cottonwood is in fact actively and was in fact historically managed by Mr. Chain, Mr.  
11 Kammeyer, and Mr. Povilaitis.

12 92. Records maintained by the Nevada Secretary of State indicate that Cottonwood is  
13 actively and was historically managed by Mr. Kammeyer and Mr. Povilaitis.

14 93. GEIII is an active Nevada domestic limited-liability company.

15 94. GEIII is in fact actively and was in fact historically managed by Mr. Chain and Mr.  
16 Gutzman.

17 95. Records maintained by the Nevada Secretary of State indicate that GEIII is actively and  
18 historically managed by Mr. Gutzman.

19 96. GEIII and Mr. Chain are in fact actively and were in fact historically managers of 99th  
20 LLC.

21 97. Records maintained by the Nevada Secretary of State indicate that GEIII is actively and  
22 was historically a manager of 99th LLC.

1 98. GEIII and Chain are in fact actively and were in fact historically managers of Gila Bend  
2 384, LLC (“Gila Bend”).

3 99. Records maintained by the Nevada Secretary of State indicate that GEIII is actively and  
4 was historically a manager of Gila Bend.

5 100. GEIII was historically a manager of Buckeye 77.

6 101. Records maintained by the Nevada Secretary of State indicate that GEIII was  
7 historically a manager of Buckeye 77.

8 102. GEIII was historically a manager of Buckeye 80.

9 103. Records maintained by the Nevada Secretary of State indicate that GEIII was  
10 historically a manager of Buckeye 80.

11 104. Gila Bend is an active Nevada domestic limited-liability company.

12 105. Gila Bend is in fact actively and was in fact historically managed by Mr. Chain and  
13 GEIII.

14 106. Records maintained by the Nevada Secretary of State indicate that Gila Bend is actively  
15 and historically managed by GEIII.

16 107. Gila Bend was in fact historically managed by Mr. Chain and Innovative.

17 108. Records maintained by the Nevada Secretary of State indicate that Gila Bend was  
18 historically managed by Innovative.

19 109. Mr. Gutzman is a Nevada resident.

20 110. Mr. Gutzman and Mr. Chain are in fact actively and were in fact historically managers  
21 of Benessere Management.  
22

1 111. Records maintained by the Nevada Secretary of State indicate that Mr. Gutzman is  
2 actively and was historically a manager of Benessere Management.

3 112. Mr. Gutzman and Mr. Chain are in fact actively and were in fact historically managers  
4 of Cipriani Management.

5 113. Records maintained by the Nevada Secretary of State indicate that Mr. Gutzman is  
6 actively and was historically a manager of Cipriani Management.

7 114. Mr. Gutzman and Mr. Chain are in fact actively and were in fact historically managers  
8 of GEIII.

9 115. Records maintained by the Nevada Secretary of State indicate that Mr. Gutzman is  
10 actively and was historically a manager of GEIII.

11 116. Mr. Gutzman and Mr. Chain are in fact actively and were in fact historically managers  
12 of Phoenix 83rd.

13 117. Records maintained by the Nevada Secretary of State indicate that Mr. Gutzman is  
14 actively and was historically a manager of Phoenix 83rd.

15 118. Mr. Gutzman and Mr. Chain are in fact actively managers of Cipriani.

16 119. Records maintained by the Nevada Secretary of State indicate that Mr. Gutzman is  
17 actively a manager of Cipriani.

18 120. Innovative is an active Nevada domestic limited-liability company.

19 121. Innovative is in fact actively and historically managed by Mr. Chain and Modern  
20 Management.

21 122. Records maintained by the Nevada Secretary of State indicate that Innovative is  
22 managed actively and historically by Modern Management.

1 123. Innovative and Mr. Chain are in fact actively and historically managers for 99th  
2 Management.

3 124. Records maintained by the Nevada Secretary of State indicate that Innovative is actively  
4 and was historically a manager for 99th Management.

5 125. Innovative and Mr. Chain were in fact historically managers for Buckeye 77.

6 126. Records maintained by the Nevada Secretary of State indicate that Innovative was  
7 historically a manager for Buckeye 77.

8 127. Innovative and Mr. Chain were in fact historically managers for Benessere  
9 Management.

10 128. Records maintained by the Nevada Secretary of State indicate that Innovative was  
11 historically a manager for Benessere Management.

12 129. Innovative and Mr. Chain were in fact historically managers for Gila Bend.

13 130. Records maintained by the Nevada Secretary of State indicate that Innovative was  
14 historically a manager for Gila Bend.

15 131. The JLC Trust is a trust established under the laws of the state of Nevada.

16 132. The JLC Trust is an active and historical manager of Phoenix 83rd.

17 133. Records maintained by the Nevada Secretary of State indicate that the JLC Trust is an  
18 active and historical manager of Phoenix 83rd.

19 134. Mr. Kammeyer is a Nevada resident.

20 135. Mr. Kammeyer and Mr. Chain are in fact actively and were in fact historically managers  
21 of Cottonwood.  
22

1 136. Records maintained by the Nevada Secretary of State indicate that Mr. Kammeyer is  
2 actively and was historically a manager of Cottonwood.

3 137. KAN Investments, LLC ("KAN") is an active Nevada domestic limited-liability  
4 company.

5 138. KAN is in fact actively and historically managed by Mr. Chain and Mr. Povilaitis.

6 139. Records maintained by the Nevada Secretary of State indicate that KAN is actively and  
7 historically managed by Mr. Povilaitis.

8 140. Mr. Martinez is a Nevada resident.

9 141. Mr. Martinez and Mr. Chain are in fact actively and were in fact historically managers  
10 of 99th Management.

11 142. Records maintained by the Nevada Secretary of State indicate that Mr. Martinez is  
12 actively and was historically a manager of 99th Management.

13 143. Mr. Martinez and Mr. Chain are in fact actively and were in fact historically managers  
14 of Phoenix 83rd.

15 144. Records maintained by the Nevada Secretary of State indicate that Mr. Martinez is  
16 actively and was historically a manager of Phoenix 83rd.

17 145. Millennium Construction, Inc., doing business as MCI ("MCI"), is an active Nevada  
18 domestic corporation.

19 146. Mr. Povilaitis is in fact actively and historically the director, secretary, and treasurer of  
20 MCI.

21 147. Records maintained by the Nevada Secretary of State indicate that Mr. Povilaitis is  
22 actively and was historically the director, secretary, and treasurer of MCI.

1 148. Rick W. Rainey (“Mr. Rainey”) is in fact actively and historically the president of MCI.

2 149. Records maintained by the Nevada Secretary of State indicate that Mr. Rainey is  
3 actively and was historically the president of MCI.

4 150. Millennium Commercial Properties, LLC (“MCP”) is an active Nevada domestic  
5 limited-liability company.

6 151. MCP is in fact actively and historically managed by Mr. Chain and RCRE, LLC  
7 (“RCRE”).

8 152. Records maintained by the Nevada Secretary of State indicate that MCP is actively and  
9 was historically managed by RCRE.

10 153. Michael’s Plaza, LLC (“Michael’s”) is an active Nevada domestic limited-liability  
11 company.

12 154. Michael’s is in fact actively managed by Mr. Chain and Modern Management.

13 155. Records maintained by the Nevada Secretary of State indicate that Michael’s is actively  
14 managed by Modern Management.

15 156. Michael’s was historically managed by Mr. Chain and, initially, by Mr. Gutzman.

16 157. Records maintained by the Nevada Secretary of State indicate that Michael’s was  
17 historically managed by Mr. Chain.

18 158. Modern Management is an active Nevada domestic corporation.

19 159. Mr. Chain is in fact actively the director, president, and treasurer, and in fact actively  
20 and historically the secretary, of Modern Management.



1 160. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
2 the director, president, and treasurer, and actively and historically the secretary, of Modern  
3 Management

4 161. Mr. Povilaitis was historically the director, president, and treasurer of Modern  
5 Management.

6 162. Records maintained by the Nevada Secretary of State indicate that Mr. Povilaitis was  
7 historically the director, president, and treasurer of Modern Management

8 163. Modern Management and Mr. Chain are in fact actively and were in fact historically  
9 managers of Innovative.

10 164. Records maintained by the Nevada Secretary of State indicate that Modern Management  
11 is actively and was historically a manager of Innovative.

12 165. Modern Management and Mr. Chain are in fact actively and were in fact historically  
13 managers of Innovative.

14 166. Records maintained by the Nevada Secretary of State indicate that Modern Management  
15 is actively and was historically a manager of Innovative.

16 167. Modern Management and Mr. Chain are in fact actively managers of Michael's.

17 168. Records maintained by the Nevada Secretary of State indicate that Modern Management  
18 is actively a manager of Michael's.

19 169. Millennium is an active Nevada domestic corporation.

20 170. Mr. Chain is in fact actively the director of Millennium.

21 171. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
22 the director of Millennium.

1 172. Mr. Chain is in fact actively and historically the president, secretary, and treasurer of  
2 Millennium.

3 173. Records maintained by the Nevada Secretary of State indicate that Mr. Chain is actively  
4 and was historically the president, secretary, and treasurer of Millennium.

5 174. Mrs. Chain was historically a director of Millennium.

6 175. Records maintained by the Nevada Secretary of State indicate that Mrs. Chain was  
7 historically a director of Millennium.

8 176. Millennium was in fact a manager for Benessere Management.

9 177. Records maintained by the Nevada Secretary of State indicate that Millennium was in  
10 fact a manager for Cipriani Management.

11 178. Phoenix 83rd is an active Nevada domestic limited-liability company.

12 179. Phoenix 83rd is in fact actively and historically managed by Mr. Chain and Mr.  
13 Gutzman.

14 180. Records maintained by the Nevada Secretary of State indicate that Phoenix 83rd is  
15 actively and was historically managed by Mr. Gutzman.

16 181. Phoenix 83rd is in fact actively and historically managed by Mr. Chain and Mr.  
17 Martinez.

18 182. Records maintained by the Nevada Secretary of State indicate that Phoenix 83rd is  
19 actively and was historically managed by Mr. Martinez.

20 183. Phoenix 83rd is in fact actively and historically managed by Mr. Chain and JLC Trust.

21 184. Records maintained by the Nevada Secretary of State indicate that Phoenix 83rd is  
22 actively and was historically managed by JLC Trust.

1 185. Phoenix 83rd is in fact actively and historically managed by Mr. Chain and Capri I.

2 186. Records maintained by the Nevada Secretary of State indicate that Phoenix 83rd is  
3 actively and was historically managed by Capri I.

4 187. Phoenix 83rd is in fact actively and historically managed by Mr. Chain and Capri II.

5 188. Records maintained by the Nevada Secretary of State indicate that Phoenix 83rd is  
6 actively and was historically managed by Capri II.

7 189. Mr. Povilaitis is a Nevada resident.

8 190. Mr. Povilaitis and Mr. Chain are in fact actively and were in fact historically managers  
9 of Cottonwood.

10 191. Records maintained by the Nevada Secretary of State indicate that Mr. Povilaitis is  
11 actively and was historically a manager of Cottonwood.

12 192. Mr. Povilaitis and Mr. Chain are in fact actively and were in fact historically managers  
13 of KAN.

14 193. Records maintained by the Nevada Secretary of State indicate that Mr. Povilaitis is  
15 actively and was historically a manager of KAN.

16 194. Mr. Povilaitis was historically the director, president, and treasurer of Modern  
17 Management.

18 195. Records maintained by the Nevada Secretary of State indicate that Mr. Povilaitis was  
19 historically the director, president, and treasurer of Modern Management.

20 196. Mr. Povilaitis and Mr. Chain were in fact historically the directors, secretaries, and  
21 treasurers of MCI.

1 197. Records maintained by the Nevada Secretary of State indicate that Mr. Povilaitis was  
2 historically the director, secretary, and treasurer of MCI.

3 198. RCRE is an active Nevada domestic limited-liability company.

4 199. RCRE is in fact actively managed by Mr. Chain and Modern Management.

5 200. Records maintained by the Nevada Secretary of State indicate that RCRE is actively  
6 managed by Modern Management.

7 201. RCRE and Mr. Chain are in fact actively managers of MCP.

8 202. Records maintained by the Nevada Secretary of State indicate that RCRE is actively  
9 managed by MCP.

10 203. T.W.B. Enterprises, Inc. ("T.W.B.") is an active Nevada domestic corporation.

11 204. Mr. Bergman is in fact actively and historically the director, president, secretary, and  
12 treasurer of T.W.B.

13 205. Records maintained by the Nevada Secretary of State indicate that Bergman is actively  
14 and was historically the director, president, secretary, and treasurer of T.W.B.

15  
16 ***B. Collective Defendant Parties***

17 206. 99th LLC, Benessere, Capri I, Cipriani, Cottonwood, Gila Bend, and Michael's are  
18 collectively referred to as the "Millennium Investment Companies."

19 207. Exhibit 1, attached hereto and incorporated herein, comprises the original operating  
20 agreement and the amended and restated operating agreement of 99th LLC (the "99th LLC  
21 Operating Agreement").  
22

1       208. Exhibit 2, attached hereto and incorporated herein, is the operating agreement of  
2 Benessere (the “Benessere Operating Agreement”).

3       209. Exhibit 3, attached hereto and incorporated herein, is the operating agreement of Capri I  
4 (the “Capri I Operating Agreement”).

5       210. Exhibit 4, attached hereto and incorporated herein, is the operating agreement of  
6 Cipriani (the “Cipriani Operating Agreement”).

7       211. Exhibit 5, attached hereto and incorporated herein, is the operating agreement of  
8 Cottonwood (the “Cottonwood Operating Agreement”).

9       212. Exhibit 6, attached hereto and incorporated herein, is the operating agreement of Gila  
10 Bend (the “Gila Bend Operating Agreement”).

11       213. Exhibit 7, attached hereto and incorporated herein, is the operating agreement of  
12 Michael’s (the “Michael’s Operating Agreement”; collectively with the 99th LLC Operating  
13 Agreement, the Benessere Operating Agreement, the Capri I Operating Agreement, the Cipriani  
14 Operating Agreement, the Cottonwood Operating Agreement, and the Gila Bend Operating  
15 Agreement, the “Operating Agreements”).

16       214. MCP, MCI, and Millennium are collectively referred to as the “Millennium Entities.”

17       215. The Chain Consortium exerts influence or control over every other Defendant through  
18 the Millennium Entities, Modern Management, or Innovative.

19       216. The Chain Consortium formed and managed the Millennium Investment Companies for  
20 the purpose of effecting business transactions associated with obtaining investments from  
21 Kabins.  
22

1       217. The Chain Consortium instituted the following respective individuals as respective  
2 managers of the respective Millennium Investment Companies as follows:

3           a. 99th Management (for 99th LLC): Mr. Chain, Mrs. Chain, Mr. Povilaitis, Mr.

4           Gutzman, and Mr. Martinez acted on behalf of, and as agents for, the management  
5           and ownership of 99th Management.

6           b. Benessere Management (for Benessere): Mr. Chain, Mrs. Chain, Mr. Povilaitis, Mr.

7           Gutzman, and Mr. Martinez acted on behalf of, and as agents for, the management  
8           and ownership of Benessere Management.

9           c. Phoenix 83rd (for Capri I): Mr. Chain and Mrs. Chain (through JLC Trust), Mr.

10          Povilaitis, Mr. Gutzman, and Mr. Martinez (through Capri II) acted on behalf of, and  
11          as agents for, the management and ownership of Phoenix 83rd.

12          d. Cipriani Management (for Cipriani): Mr. Chain, Mrs. Chain, Mr. Povilaitis, and Mr.

13          Gutzman acted on behalf of, and as agents for, the management and ownership of  
14          Cipriani Management.

15          e. Mr. Kammeyer and Mr. Povilaitis (for Cottonwood): Mr. Chain, Mr. Kammeyer, and

16          Mr. Povilaitis acted on behalf of, and as agents for, the management and ownership of  
17          Cottonwood, including Modern Management and Innovative.

18          f. GEIII and Innovative (for Gila Bend): Mr. Chain, Mrs. Chain, Mr. Povilaitis, and Mr.

19          Gutzman acted on behalf of, and as agents for, the management and ownership of  
20          GEIII and Innovative.

21          g. Modern Management, Innovate, and 3900 LLC (for Michael's): Mr. Chain, Mrs.

22          Chain, and Mr. Povilaitis acted on behalf of, and as agents for, the management and

1 ownership of Modern Management. Mr. Gutzman was a member/manager at the time  
2 of formation of Michael's.

3 h. The Defendants described in subparagraphs 217a through 217g are collectively  
4 referred to as "Managers."

5 218. Other businesses or individuals in which the Chain Consortium, by way of one or more  
6 of the Chain Consortium's general partners, had pecuniary interests, but in which Kabins did not  
7 have a pecuniary interest, are referred to as "Misappropriation Beneficiaries."

8  
9 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

10 219. The Chain Consortium, the Millennium Entities, and the Managers created the  
11 Millennium Investment Companies.

12 220. Mr. Chain, personally, and on behalf of Millennium, the Millennium Entities, and the  
13 Chain Consortium, gave a guarantee to Kabins that Kabins respectively would never lose any of  
14 the money invested by Kabins in the Millennium Investment Companies.

15 221. The Chain Consortium managed and controlled the Managers, the Millennium Entities,  
16 and the Millennium Investment Companies.

17 222. The Managers controlled the respective Millennium Investment Companies' day-to-day  
18 business operations, checking accounts, and authorization or consent to disbursements of  
19 Kabins' invested capital to and through the Defendants.

20 223. The Chain Consortium is and was part of a common enterprise using the  
21 instrumentalities of interstate commerce for the Chain Consortium's individual, respective, and  
22 joint pecuniary interests in a scheme to defraud Kabins (the "Enterprise").

1       224. The Chain Consortium organized, created, and controlled the Enterprise's entities  
2 associated with the Millennium Investment Companies to create a façade of an apparently  
3 legitimate portfolio of securities associated with investments in real properties.

4       225. The Chain Consortium agreed, as evidenced by the Operating Agreements and the  
5 Millennium Investment Companies' check registers, maliciously to concoct inducement  
6 misrepresentations, oppressive concealment protocols, and supporting documentation that was  
7 spurious, deceptive, incomplete, and unintelligible, with the intent to defraud Kabins out of  
8 approximately \$11 million.

9       226. The Chain Consortium, the Managers, and the Millennium Entities used the Millennium  
10 Investment Companies to receive large, undisclosed commissions immediately after Kabins  
11 invested capital in the respective Millennium Investment Companies.

12       227. The Chain Consortium used the Managers and the Millennium Entities to pay the Chain  
13 Consortium millions of dollars of commissions and other up-front compensation from Kabins'  
14 invested money, which commissions and compensation the Chain Consortium, the Managers,  
15 and the Millennium Entities intentionally, maliciously, and oppressively concealed from Kabins.

16       228. The Chain Consortium, the Managers, and the Millennium Entities deliberately  
17 conspired and agreed to create the circumstances for communicating a series of malicious,  
18 oppressive, and fraudulent misrepresentations and for failing to reveal material omissions to  
19 induce Kabins to purchase securities with the Millennium Investment Companies.

20       229. The Chain Consortium exercised actual power or control over the Managers, the  
21 Millennium Entities, and the Millennium Investment Companies when the Defendants effected  
22 the respective transactions with Kabins.



1       230. The Chain Consortium, the Managers, and the Millennium Entities intended for Kabins  
2 to rely on the Chain Consortium's, the Managers', and the Millennium Entities' efforts,  
3 communications, and special or fiduciary relationships with Kabins because the Chain  
4 Consortium knew that Kabins did not possess skills or knowledge applicable to investments for  
5 real property acquisition, property development, or sales.

6       231. The Chain Consortium, the Managers, and the Millennium Entities routinely breached  
7 the duty, arising out of the Chain Consortium's, Managers', and Millennium Entities' fiduciary  
8 duties as expressed in the Operating Agreements and pursuant to Nevada law, to exercise  
9 reasonable care in obtaining and communicating information to Kabins regarding the affairs of  
10 the respective Millennium Investment Companies and regarding Kabins' investments in the  
11 respective Millennium Investment Companies.

12       232. Each Defendant substantially assisted and encouraged each of the other Defendants,  
13 through direct communication with, or conduct in close proximity to or in furtherance of, the  
14 Chain Consortium, the Managers, the Millennium Entities, and the Millennium Investment  
15 Companies, to engage in a pattern of unlawful activity pursuant to a common design and concert  
16 of action based upon fraudulent misrepresentations used to defraud Kabins and to misappropriate  
17 Kabins' respective money through sales of securities associated with each of the Millennium  
18 Investment Companies.

19       233. In or about 1995, Dr. Kabins met Mr. Bergman when Mr. Bergman was a sales  
20 representative and Dr. Kabins was one of Mr. Bergman's customers.

21       234. In or about 2004, Mr. Bergman entered into an agreement with Mr. Chain, who was  
22 acting on behalf of the Chain Consortium and as an agent for the Managers, the Millennium

1 Entities, and the Millennium Investment Companies, under which agreement Mr. Chain agreed  
2 that, if Mr. Bergman could bring Mr. Chain invested money from Kabins, Mr. Chain would pay  
3 Mr. Bergman an undisclosed up-front finder's fee or commission out of Kabins' respective  
4 invested capital.

5 235. Mr. Bergman touted Mr. Chain to Kabins and introduced Mr. Chain to Kabins in  
6 approximately 2004.

7 236. Mr. Bergman and Mr. Chain intentionally concealed the agreement for the Chain  
8 Consortium to pay Mr. Bergman from Kabins' respective investments in the form of  
9 kickbacks—undisclosed, up-front, commissions—to Mr. Bergman.

10 237. The Millennium Investment Companies' check registers provide evidence of the  
11 agreement between Mr. Bergman and Mr. Chain whereby Millennium Investment Companies  
12 received Kabins' investments and then, almost immediately, paid a percentage of Kabins'  
13 investment to Mr. Bergman through Mr. Bergman's entity, T.W.B.

14 238. In November 2006, Mr. Bergman specifically told Kabins that, if Kabins would invest  
15 money with any companies affiliated with Mr. Chain, Mr. Bergman would not receive any up-  
16 front compensation, commission, or kickback from Kabins' respective investments.

17 239. Mr. Bergman's statement to Kabins regarding up-front compensation was false and  
18 misleading, and Mr. Bergman knew Mr. Bergman's statement to Kabins regarding up-front  
19 compensation statement was false and misleading when Bergman made that statement to Kabins.

20 240. Kabins tendered Kabins' first of seven total investments in November 2004 by  
21 purchasing an equity interest in Benessere, formerly Buckeye 77.  
22

1       241. On or about November 30, 2004, Mr. Bergman created T.W.B. to create a corporate veil  
2 for Mr. Bergman's fraudulent activities.

3       242. The prospect of obtaining the millions of dollars worth of undisclosed up-front  
4 compensation was the motivation for each of the general partners of the Chain Consortium, the  
5 Managers, and the Millennium Entities to set up a fraudulent scheme and to gamble with Kabins'  
6 money in an inflated and highly speculative land market while maliciously and oppressively  
7 misrepresenting to Kabins that Kabins' invested principal in the Millennium Investment  
8 Companies would not be subject to losses.

9       243. The Chain Consortium, the Managers, and the Millennium Entities took Kabins'  
10 personal property, specifically, Kabins' invested money, in denial of, or inconsistent with,  
11 Kabins' rights, or in derogation, exclusion, or defiance of such rights, by misrepresenting to  
12 Kabins that, for each of Kabins' investments, Kabins' invested money had been, and would be,  
13 preserved with each of the Millennium Investment Companies.

14       244. The Chain Consortium, the Managers, and the Millennium Entities took Kabins'  
15 invested money and exercised dominion and control over Kabins' money, to the exclusion of  
16 Kabins, to pay the Chain Consortium and others substantial amounts of up-front, undisclosed,  
17 commissions, fees, and expenses out of Kabins' invested money.

18  
19       **A.     The Inducement Misrepresentations**

20       245. In or about October 2004, before making any investments in the Millennium Investment  
21 Companies, Kabins communicated to Mr. Bergman and Mr. Chain that Kabins would invest in a  
22

1 real property venture only if the real properties could be acquired and maintained without any  
2 loans, *i.e.*, without leverage risk (the “Leverage Risk Condition”).

3 246. Mr. Bergman and Mr. Chain communicated Kabins’ Leverage Risk Condition to the  
4 Chain Consortium, the Managers, and the Millennium Entities.

5 247. The Chain Consortium, the Managers, and the Millennium Entities touted to Kabins the  
6 Chain Consortium’s, the Managers’, and the Millennium Entities’ skill and success with real  
7 property investments to induce Kabins to rely on the Chain Consortium, the Managers, and the  
8 Millennium Entities as competent and trustworthy.

9 248. The Chain Consortium, the Managers, and the Millennium Entities had access to  
10 information regarding the Millennium Investment Companies not possessed by or available to  
11 Kabins.

12 249. The Managers were fiduciaries with respect to Kabins because of the Managers’ status  
13 as managers of the Millennium Investment Companies and because of the fiduciary duties  
14 expressed in and arising from the Operating Agreements.

15 250. Kabins reasonably relied on the Chain Consortium, the Managers, the Millennium  
16 Entities, and the Millennium Investment Companies because of the fiduciary relationships  
17 expressed in the Operating Agreements and arising out of Nevada law, the exclusive access to  
18 facts and information possessed by Defendants, and the skills that Defendants claimed  
19 Defendants possessed regarding investments in real property.  
20  
21  
22

1                   I.       The “Free and Clear Misrepresentation” concerning Michael’s, 99th  
2                                   LLC, Capri I, and Cottonwood

3       251. Directly prior to every investment of money by a Kabins entity in a Millennium  
4 Investment Company, Mr. Bergman and Mr. Chain, as agents for the Chain Consortium, the  
5 Managers, and the Millennium Entities, told Kabins that each of the Millennium Investment  
6 Companies was, and would be, free of any debts, or “free and clear,” such that Kabins’  
7 respective investments could not be subject to foreclosures or leverage risks associated with  
8 creditors (the “Free and Clear Misrepresentation”).

9       252. Kabins reasonably relied on the Free and Clear Misrepresentation with respect to each  
10 of the Millennium Investment Companies.

11       253. The Chain Consortium maliciously intended for Kabins to rely on the Free and Clear  
12 Misrepresentation, which was material, false and oppressive, with respect to Michael’s, which  
13 carried approximately \$6,000,000 in debt.

14       254. The Chain Consortium maliciously intended for Kabins to rely on the Free and Clear  
15 Misrepresentation, which was material, false and oppressive, with respect to 99th LLC, which  
16 carried approximately \$21,000,000 in debt.

17       255. The Chain Consortium maliciously intended for Kabins to rely on the Free and Clear  
18 Misrepresentation, which was material, false and oppressive, with respect to Capri I, which  
19 carried approximately \$23,000,000 in debt.

20       256. The Chain Consortium maliciously intended for Kabins to rely on the Free and Clear  
21 Misrepresentation, which was material, false, and oppressive, with respect to Cottonwood, which  
22 carried approximately \$2,600,000 in debt.

1       257. The Chain Consortium knew the Free and Clear Misrepresentation was false when made  
2 with respect to Michael's, 99th LLC, Capri I, and Cottonwood.

3  
4               2.       *The Distribution Misrepresentation*

5       258. Directly prior to every investment of money by a Kabins entity in a Millennium  
6 Investment Company, Mr. Bergman and Mr. Chain, as agents for the Chain Consortium, the  
7 Managers, and the Millennium Entities, told Kabins that each of the Millennium Investment  
8 Companies and each of the Managers would not permit any member, any manager, Mr.  
9 Bergman, or any other "insider" to take substantial distributions or up-front commissions from  
10 Kabins' invested funds until after the successful sale of the business or property associated with  
11 each of the Millennium Investment Companies (the "Distribution Misrepresentation"),  
12 specifically telling Kabins that no one would be paid any compensation except on the "back  
13 end."

14       259. Kabins reasonably relied on the Distribution Misrepresentation as limiting the Managers  
15 to incurring only conservative, reasonable expenses that would not adversely affect the viability  
16 of the Millennium Investment Companies or Kabins' invested principal.

17       260. The Chain Consortium, the Managers, and the Millennium Entities maliciously intended  
18 for Kabins to rely on the Distribution Misrepresentation, which was material, false, and  
19 oppressive.

20       261. The Chain Consortium, the Managers, and the Millennium Entities knew the  
21 Distribution Misrepresentation was false and fraudulent when made with respect to each of the  
22 Millennium Investment Companies.

1       262. For each of Kabins' respective investments in the respective Millennium Investment  
2 Companies, and at the time when the Chain Consortium, the Managers, and the Millennium  
3 Entities made the Distribution Misrepresentation, the Chain Consortium, the Managers, and the  
4 Millennium Entities also had prepared disclosures to deliver to Kabins *after* Kabins relied on the  
5 Distribution Misrepresentation and after Kabins had already invested in each of the Millennium  
6 Investment Companies (the "Untimely Disclosures").

7       263. The Untimely Disclosures purported to reveal, partially, that the Chain Consortium, the  
8 Managers, and the Millennium Entities had indeed intended to take substantial distributions from  
9 Kabins' invested capital to pay the Chain Consortium, the Managers, and the Millennium  
10 Entities in the form of front-end compensation.

11       264. Mr. Bergman routinely traveled to Dr. Kabins' Place of Business and, while at Dr.  
12 Kabins' Place of Business, misrepresented to Kabins that, if Kabins invested money with Mr.  
13 Chain's businesses, Mr. Bergman would not receive any up-front compensation, commission, or  
14 kickback emanating from Kabins' respective investments, a representation Mr. Bergman knew  
15 was false when Mr. Bergman made such misrepresentation to Kabins.

16       265. Kabins relied on Mr. Bergman's statements because Mr. Bergman was in the best  
17 position to know whether or not Mr. Bergman would be compensated from a part of Kabins'  
18 respective invested money, such as a front-end commission.

19       266. Kabins insisted that no front-end commissions could be paid from Kabins' respective  
20 investments, because Kabins wanted to ensure that the respective investments would be used to  
21 maximize the property acquisitions and minimize the need for any debt financing.  
22

1       267. Mr. Bergman's failure to disclose to Kabins that Mr. Bergman would receive up-front  
2 commissions paid from Kabins' respective invested money constituted a material omission,  
3 because Kabins would not have invested under such conditions if Kabins had known that Mr.  
4 Bergman would receive such up-front commissions paid from Kabins' respective invested  
5 money.

6  
7               3.       *The Principal Protection Misrepresentation*

8       268. Directly prior to every investment of money by a Kabins entity in a Millennium  
9 Investment Company, Mr. Bergman and Mr. Chain, as agents for the Chain Consortium, the  
10 Managers, and the Millennium Entities, told Kabins that each of the Millennium Investment  
11 Companies was "not possibly going to lose money," and that "the worst thing that could happen  
12 is that [Kabins] would get [Kabins'] money back," misleading Kabins to perceive that Kabins'  
13 invested principal was nearly as safe as a bank savings account or an investment in United States  
14 Treasury bills (the "Principal Protection Misrepresentation").

15       269. Kabins reasonably relied on the Principal Protection Misrepresentation because Kabins  
16 believed Mr. Bergman and Mr. Chain to possess, and Mr. Bergman and Mr. Chain in fact  
17 possessed, knowledge superior to that of Kabins regarding the Millennium Investment  
18 Companies' operations and financial conditions.

19       270. The Chain Consortium, the Managers, and the Millennium Entities maliciously intended  
20 for Kabins to rely on the Principal Protection Misrepresentation, which was material, false, and  
21 oppressive. The Chain Consortium, the Managers, and the Millennium Entities knew the  
22 Principal Protection Misrepresentation was false and fraudulent with respect to the Millennium



5       271. The Chain Consortium, the Managers, and the Millennium Entities made the Principal  
6 Protection Misrepresentation with respect to each of Kabins' respective investments in each of  
7 the Millennium Investment Companies, while planning to misrepresent Kabins' principal on tax  
8 forms and financial reports from each of the respective Millennium Investment Companies,  
9 which forms and reports falsely represented to Kabins that Kabins' principal remained intact  
10 even after the Chain Consortium, the Managers, and the Millennium Entities made substantial  
11 disbursements to the Chain Consortium, the Managers, and the Millennium Entities out of  
12 Kabins' invested capital.

13       272. The Chain Consortium, the Managers, and the Millennium Entities first delivered the  
14 Buckeye 77 (Benessere) 2004 K-1 to Kabins misrepresenting that, despite the substantial  
15 disbursements to the Chain Consortium, the Managers, and the Millennium Entities, every dollar  
16 of Kabins' principal had been protected.

17       273. For each of Kabins' subsequent respective investments in Cipriani, Gila Bend,  
18 Michael's Plaza, 99th LLC, Capri I, and Cottonwood, the Chain Consortium, the Managers, and  
19 the Millennium Entities knew, at the time when the Chain Consortium, the Managers, and the  
20 Millennium Entities made the Principal Protection Misrepresentation, that the Principal  
21 Protection Misrepresentation was false and would be reported falsely to Kabins on every year-  
22 end K-1 for each of the Millennium Investment Companies.

1       274. The Chain Consortium, the Managers, and the Millennium Entities did deliver false  
2 reporting of Kabins' principal for each of the Millennium Investment Companies on year-end K-  
3 1s at each year-end following the investment of such principal.

4       275. The Chain Consortium, the Managers, and the Millennium Entities knew that the  
5 Distribution Misrepresentation and the Principal Protection Misrepresentation were false every  
6 time the Defendants made the Distribution Misrepresentation and the Principal Protection  
7 Misrepresentation to Kabins, based on the Chain Consortium's, the Managers', and the  
8 Millennium Entities' preparation of documents, lack of reserve funds, and the protocol of  
9 reporting to Kabins on K-1 tax forms, financial reports, and correspondence that Kabins'  
10 principal investment never diminished.

11  
12               4.       *The Liquidity Misrepresentation*

13       276. Directly prior to every investment of money by a Kabins entity in a Millennium  
14 Investment Company, Mr. Bergman and Mr. Chain, as agents for the Chain Consortium, the  
15 Managers, and the Millennium Entities, told Kabins that the Millennium Investment Companies  
16 were "ground-floor" opportunities and that people "wanted to get in" and that the Managers for  
17 Kabins' investments could find investors who would purchase Kabins' equity interests for a  
18 reasonable price if Kabins wanted to sell at any time (the "Liquidity Misrepresentation").

19       277. Kabins reasonably relied on the Principal Protection Misrepresentation because Kabins  
20 believed Mr. Bergman and Mr. Chain to possess, and Mr. Bergman and Mr. Chain in fact  
21 possessed, knowledge superior to that of Kabins regarding the Millennium Investment  
22

1 Companies' operations and financial conditions, including the Millennium Investment  
2 Companies' liquidity.

3 278. The Chain Consortium, the Managers, and the Millennium Entities maliciously intended  
4 for Kabins rely on the Liquidity Misrepresentation, which misrepresentation was material, false,  
5 and oppressive.

6 279. The Chain Consortium, the Managers, and the Millennium Entities knew the Liquidity  
7 Misrepresentation was false and fraudulent with respect to the Millennium Investment  
8 Companies.

9 280. Before Kabins invested money in Benessere and Cipriani, Mr. Gutzman personally, and  
10 as an agent for the Chain Consortium, the Managers, and the Millennium Entities, verified the  
11 Liquidity Misrepresentation and the Principal Protection Misrepresentations to Kabins for the  
12 purpose of inducing Kabins to invest in Benessere and Cipriani. As part of the mix of  
13 investment information upon which Kabins relied in making Kabins' decision to invest in  
14 Benessere and in Cipriani, Kabins reasonably relied on Mr. Gutzman's misrepresentations in  
15 making Kabins' decision to invest in Benessere and in Cipriani.

16  
17 5. The Risk of Loss Omission

18 281. Directly prior to every investment of money by a Kabins entity in a Millennium  
19 Investment Company, Mr. Bergman and Mr. Chain, as agents for the Chain Consortium, the  
20 Managers, and the Millennium Entities, failed to disclose to Kabins the material fact that Kabins  
21 should be entitled to claim tax losses associated with each of the investments, because the Chain  
22

1 Consortium, the Managers, and the Millennium Entities intended to conceal the fact that the  
2 Kabins' principal was subject to risk of loss.

3 282. Mr. Bergman and Mr. Chain, as agents for the Chain Consortium, the Managers, and the  
4 Millennium Entities, failed to disclose to Kabins the material fact that 100 percent of any  
5 economic losses (prior to the generation of net profits) would be allocable to Kabins and other  
6 cash investors until the Millennium Investment Companies completely depleted Kabins' invested  
7 capital, and the Chain Consortium, the Managers, and the Millennium Entities intended to  
8 commingle and embezzle Kabins' capital (the "Risk of Loss Omission").

9 283. Kabins reasonably relied on the absence of risk of loss in making Kabins' investments  
10 in the Millennium Investment Companies, because Kabins believed Mr. Bergman and Mr. Chain  
11 to possess, and Mr. Bergman and Mr. Chain in fact possessed, knowledge superior to that of  
12 Kabins regarding the Millennium Investment Companies' operations and financial conditions.

13 284. The Chain Consortium, the Managers, and the Millennium Entities maliciously intended  
14 for Kabins to rely on the Risk of Loss Omission, which omission was material, misleading, false,  
15 and oppressive, and the Chain Consortium, the Managers, and the Millennium Entities knew that  
16 the Chain Consortium, the Managers, and the Millennium Entities should have disclosed the  
17 Risk of Loss Omission, pursuant to a duty to speak, in order to make the perception of low risk  
18 not be misleading to Kabins.

19 285. Had the Chain Consortium, the Managers, and/or the Millennium Entities disclosed the  
20 Risk of Loss Omission to Kabins at any time prior to any of Kabins' respective investments in  
21 the respective Millennium Investment Companies, that disclosure would have substantially  
22

1 altered the mix of investment information available to Kabins such that Kabins would not have  
2 invested in the Millennium Investment Companies.

3  
4 6. The Inducement Misrepresentations

5 286. The Free and Clear Misrepresentation, Distribution Misrepresentation, Principal  
6 Protection Misrepresentation, Liquidity Misrepresentation, and Risk of Loss Omission are  
7 collectively referred to as the “Inducement Misrepresentations.” Kabins did not know that the  
8 Inducement Misrepresentations were untrue or misleading, and Kabins could not have known,  
9 with the exercise of reasonable care or diligence, that the Inducement Misrepresentations were  
10 untrue or misleading.

11 287. The Inducement Misrepresentations would have been viewed by a reasonable investor,  
12 and are viewed by Kabins, as significantly altering the total mix of information that Defendants  
13 communicated to Kabins concerning the Millennium Investment Companies. If Kabins had  
14 known the truth regarding the Inducement Misrepresentations, Kabins would not have invested  
15 in the Millennium Investment Companies.

16 288. The Inducement Misrepresentations were material and caused Kabins to invest in each  
17 of the Millennium Companies, which, in turn, caused substantial losses of Kabins’ respective  
18 invested capital and Kabins’ benefit of the respective bargains.

19 289. The Chain Consortium, the Managers, and the Millennium Entities assented to  
20 communicating the Inducement Misrepresentations to Kabins.

21 290. The Chain Consortium, the Managers, and the Millennium Entities failed to disclose to  
22 Kabins the material fact that, every time Kabins invested money in a Millennium Investment

1 Company, the Chain Consortium, the Managers, and the Millennium Entities intended to transfer  
2 substantial amounts of Kabins' invested money to the Misappropriation Beneficiaries.

3 291. The Chain Consortium, the Managers, and the Millennium Entities failed to disclose to  
4 Kabins the material fact that, every time Kabins invested money in a Millennium Investment  
5 Company, the Chain Consortium, the Managers, and the Millennium Entities did transfer  
6 substantial amounts of Kabins' invested money to the Misappropriation Beneficiaries.

7 292. The Chain Consortium, the Managers, and the Millennium Entities failed to disclose to  
8 Kabins the material fact that, every time Kabins invested money in a Millennium Investment  
9 Company, the Chain Consortium, the Managers, and the Millennium Entities intended to  
10 commingle Kabins' invested money with money belonging to the Misappropriation  
11 Beneficiaries.

12 293. The Chain Consortium, the Managers, and the Millennium Entities failed to disclose to  
13 Kabins the material fact that, every time Kabins invested money in a Millennium Investment  
14 Company, the Chain Consortium, the Managers, and the Millennium Entities did commingle  
15 Kabins' invested money with money belonging to the Misappropriation Beneficiaries.

16  
17 ***B. The Pattern of Inducement Misrepresentations***

18 *1. 2004-2005: Benessere, Cipriani, and Gila Bend*

19 294. The Chain Consortium, the Managers, and the Millennium Entities told Kabins, before  
20 Kabins made each of Kabins' respective investments, that the standard procedure of the Chain  
21 Consortium, the Managers, and the Millennium Entities was for Kabins to invest money first,  
22 and then review and sign supporting documentation at a later date.

295. This procedural requirement described for Kabins was materially false, misleading, and allowed the Chain Consortium, the Managers, and the Millennium Entities to create an opportunity for the Chain Consortium, the Managers, and the Millennium Entities to commit fraud in the execution or inception.

296. The Chain Consortium, the Managers, and the Millennium Entities first obtained Kabins' respective investments for the following real property ventures:

- a. Benessere, on or about November 9, 2004, from LCK Trust, for \$1,000,000.00 (the "Benessere Investment");
- b. Cipriani, on or about April 27, 2005, from LCK Trust, for \$1,000,000.00, with \$200,000.00 paid on April 27, 2005, and \$800,000.00 paid on May 5, 2005 (collectively, the "Cipriani Investment"); and
- c. Gila Bend, on or about May 12, 2005, from Kabins LP, for \$1,000,000.00 (the "Gila Bend Investment").

297. Kabins made the Benessere Investment, the Cipriani Investment, and the Gila Bend Investment based on the Inducement Misrepresentations, with the exception of the Free and Clear Misrepresentation.

298. After Kabins had made the Benessere Investment, the Cipriani Investment, and the Gila Bend Investment, the Chain Consortium, the Managers, and the Millennium Entities built relationships with Kabins by routinely delivering to Kabins through the United States mail false reports, misleading Millennium Investment Company statements, and misleading K-1 tax forms.

299. Before Kabins LP invested in Michael's, the false reports delivered to Kabins misrepresented the status of the Benessere Investment, the Cipriani Investment, and the Gila

1 Bend Investment by showing that all of Kabins' initial capital had been preserved, while, in fact,  
2 the Managers had paid the Managers' selves, the Millennium Entities, the Chain Consortium,  
3 and others, substantial amounts of money from Kabins' respective invested capital such that  
4 Kabins' initial investments had, in fact, diminished.

5 300. On or about January 21, 2006, the Chain Consortium, the Managers, and the  
6 Millennium Entities used the Chain Consortium's, the Managers', and the Millennium Entities'  
7 control over the Benessere Investment, the Cipriani Investment, and the Gila Bend Investment to  
8 influence Kabins to invest in four additional Millennium Investment Companies—Michael's,  
9 99th LLC, Capri I, and Cottonwood.

10  
11 2. 2006: Michael's

12 301. In furtherance of the Chain Consortium's interests, Mr. Chain, Mr. Bergman, Mr.  
13 Gutzman, and Mr. Povilaitis, along with Mr. Chain's, Mr. Bergman's, Mr. Gutzman's, and Mr.  
14 Povilaitis' respective entities including, without limitation, 3900, Modern Management,  
15 Innovative, T.W.B., GEIII, KAN, MCP, MCI, and Millennium (collectively, the "Michael's  
16 Conspirators") fashioned a scheme to mislead Kabins LP into believing that Kabins' fourth  
17 respective investment, Michael's, would have the same purportedly negligible financial risks as  
18 the Benessere Investment, the Cipriani Investment, and the Gila Bend Investment.

19 302. By communicating the Free and Clear Misrepresentation to Kabins with respect to  
20 Michael's, the Michael's Conspirators maliciously and oppressively misled Kabins into  
21 believing that Kabins LP's investment in Michael's would satisfy the Leverage Risk Condition.

22 303. Michael's did not own any real property.



1       304. At all times, the Michael's Conspirators knew that Michael's did not own any real  
2 property.

3       305. On or about February 10, 2006, at Dr. Kabins' Place of Business, Mr. Chain and Mr.  
4 Bergman, as agents for the Michael's Conspirators and in furtherance of the Chain Consortium's  
5 interests, misrepresented to Kabins that Kabins LP would be investing in a company that owned  
6 real property, as had been the case with respect to the Benessere Investment, the Cipriani  
7 Investment, and the Gila Bend Investment.

8       306. The Michael's Conspirators told Kabins that Michael's was capable of producing rental  
9 income from a small retail plaza while concealing from Kabins the fact that the rental income  
10 would not be sufficient to satisfy the requisite debt financing.

11       307. On or about February 10, 2006, Mr. Bergman misrepresented to Kabins again that Mr.  
12 Bergman would not receive any up-front commissions as a result of any of Kabins' respective  
13 investments, and Mr. Bergman specifically told Kabins that Mr. Bergman would not receive any  
14 up-front payment related to Kabins LP's investment in Michael's.

15       308. The Michael's Conspirators' misrepresentations to Kabins LP were oppressive,  
16 malicious, false and fraudulent, and the Michael's Conspirators knew those misrepresentations  
17 were false when the Michael's Conspirators communicated those misrepresentations to Kabins.

18       309. The Michael's Conspirators had created Michael's to be an 80 percent member of 3900,  
19 while intentionally concealing this material fact from Kabins LP.

20       310. 3900 was subject to a bank loan of approximately six million dollars (\$6,000,000) in  
21 debt both before and after the Michael's Conspirators told Kabins LP that Kabins LP's  
22 investment in Michael's would not be subject to any debt financing, loans, or leverage risk.

1        311. 3900 owned the actual real property that Michael's was purported to Kabins LP by the  
2 Michael's Conspirators to own, while Mr. Chain and Mr. Povilaitis, through Modern  
3 Management and KAN, owned the remaining 20 percent of 3900 in addition to Mr. Chain and  
4 Mr. Povilaitis' membership interest in Michael's, which was unknown to Kabins because the  
5 Michael's Conspirators intentionally concealed this material fact from Kabins LP.

6        312. The Michael's Conspirators concealed the actual leverage risk associated with the  
7 Michael's investment based on the fact that, even though Michael's is only a member of 3900,  
8 and Michael's itself does not appear to have any debt, Kabins LP's investment in Michael's was  
9 subject to the leverage risk attributable to 3900's loan of nearly \$6,000,000.00 (the "Michael's  
10 Artifice").

11        313. Kabins LP reasonably relied on the Michael's Conspirators' communication of the Free  
12 and Clear Misrepresentation regarding the absence of leverage risk.

13        314. Mr. Gutzman secretly resigned from Michael's at approximately the same time that  
14 Kabins LP invested in Michael's, a fact not communicated to Kabins LP, demonstrating Mr.  
15 Gutzman's knowledge of the actual financial risk associated with investments in Michael's.

16        315. On approximately February 10, 2009, Mr. Bergman and Mr. Chain, as agents for the  
17 Michael's Conspirators, communicated the Inducement Misrepresentations to Kabins LP at Dr.  
18 Kabins' Place of Business.

19        316. In February and March 2006, Kabins LP invested \$3 million to obtain equity interests in  
20 Michael's as follows:

- 21            a. \$1,000,000.00 on February 24, 2006;
- 22            b. \$1,000,000.00 on February 27, 2006;

1 c. \$300,000.00 on March 6, 2006; and

2 d. \$600,000.00 on or about March 7, 2006 (the “Michael’s Investments”).

3 317. Almost immediately after the Michael’s Conspirators received Kabins LP’s \$3 million  
4 investment, the Michael’s Conspirators paid the Michael’s Conspirators \$2.37 million as  
5 follows:

6 a. \$2,000,000 on March 2, 2006 to Innovative;

7 b. \$150,000.00 on March 7, 2006 to T.W.B.;

8 c. \$50,000.00 on March 8, 2006 to T.W.B.; and

9 d. \$165,870.00 on March 21, 2006, to Innovative (collectively, the “Michael’s  
10 Disbursements”).

11 318. The Michael’s Conspirators made the Michael’s Disbursements within approximately  
12 one month of the first of the Michael’s Investments.

13 319. The Michael’s Conspirators delayed providing the Michael’s Operating Agreement to  
14 Kabins LP for nearly four months following the last of the Michael’s Investments.

15 320. At the time the Michael’s Conspirators provided the Michael’s Operating Agreement to  
16 Kabins LP, Mr. Chain and Mr. Bergman made the Execution Misrepresentation to Kabins.

17 321. Kabins LP could only have relied on the Inducement Misrepresentations in making the  
18 Michael’s Investments, as well as the prior pattern of Inducement Misrepresentations  
19 surrounding the Benessere Investment, the Cipriani Investment, and the Gila Bend Investment, in  
20 making Kabins LP’s investment in Michael’s, because Kabins LP had no source of information  
21 with respect to Michael’s other than the Michael’s Conspirators and the documentation provided  
22 to Kabins LP by the Michael’s Conspirators.

1       322. The Michael's Conspirators concealed the Michael's Operating Agreement and any  
2 other written disclosures regarding Michael's from Kabins LP until well after the Michael's  
3 Conspirators had made the Michael's Disbursements.

4       323. The Michael's Conspirators had paid an up-front commission to Mr. Bergman, through  
5 T.W.B., consisting of five percent of Kabins LP's investment in Michael's, in breach of the  
6 Distribution Misrepresentation and in breach of Mr. Bergman's representations.

7       324. The Michael's Conspirators knowingly acted in derogation, exclusion, or defiance of  
8 Kabins LP's rights to Kabins LP's capital invested via the Michael's Investments, to the  
9 exclusion of Kabins LP, to make undisclosed payments from the Michael's Investments to Mr.  
10 Bergman and the other Michael's Conspirators.

11       325. The income generated by Michael's was not enough to cover debt service, and the  
12 Michael's Conspirators had no plan for protecting investors, which resulted in the insolvency of  
13 Michael's and damaged Kabins LP in an amount to be determined at trial.

14       326. The Michael's Conspirators subsequently concealed the precarious financial position of  
15 Michael's by delivering false financial statements and K-1s to Kabins through use of the United  
16 States mail, which statements and K-1s misrepresented that all of Kabins LP's investments in  
17 Michael's had been preserved. Kabins LP relied on the false financial statements and K-1s,  
18 which prevented Kabins LP from discovering the fraud associated with Michael's until early  
19 2009, when Kabins LP's attorney received and analyzed Michael's financial statements.

1                   3.       2006-2007: 99th LLC, Capri I, and Cottonwood

2           327. After the Michael's Conspirators defrauded Kabins LP with the Michael's Artifice, the  
3 Chain Consortium, the Managers, and the Millennium Entities used the Chain Consortium's, the  
4 Managers', and the Millennium Entities' prior pattern of fraudulent misrepresentations to induce  
5 Kabins to invest in 99th LLC, Capri I, and Cottonwood, all of which were highly leveraged and  
6 supported exclusively with short-term financing.

7           328. On or about April 10, 2006, Kabins LP invested \$1,000,000.00 to obtain equity interests  
8 in 99th LLC; on November 30, 2006, Kabins LP invested \$35,635.19 to obtain equity interests in  
9 99th LLC; and on February 14, 2007, Kabins LP invested \$1,500,000.00 to obtain equity  
10 interests in 99th LLC (the "99th LLC Investments").

11          329. On or about May 10, 2007, LCK Trust invested \$2,000,000.00 to obtain equity interests  
12 in Capri I (the "Capri I Investment").

13          330. On or about August 3, 2007, LCK Trust invested \$650,000.00 to obtain equity interests  
14 in Cottonwood (the "Cottonwood Investment").

15          331. Directly prior to Kabins making the respective 99th LLC Investments, the Capri I  
16 Investment, and the Cottonwood Investment, the Chain Consortium, the Managers, and the  
17 Millennium Entities concealed the leverage risk associated with 99th LLC, Capri I, and  
18 Cottonwood, respectively, by telling Kabins that 99th LLC, Capri I, and Cottonwood,  
19 respectively, were subject to no leverage risk or debt financing and that the 99th LLC  
20 Investments, the Capri I Investment, and the Cottonwood Investment, respectively, would carry  
21 the same purportedly minimal risks associated with the Benessere Investment, the Cipriani  
22 Investment, and the Gila Bend Investment.

1       332. The Chain Consortium, the Managers, and the Millennium Entities took Kabins’  
2       respective invested money and paid the Chain Consortium, the Managers, and the Millennium  
3       Entities significant, undisclosed up-front buyer’s commissions and management and consulting  
4       fees.

5       333. The Chain Consortium, the Managers, and the Millennium Entities failed to disclose  
6       when Kabins tendered the 99th LLC Investments, the Capri I Investment, and the Cottonwood  
7       Investment that the Managers had taken for the Managers’ selves high ownership percentages—  
8       60 percent in 99th LLC, 67 percent in Capri I, and 60 percent in Cottonwood—obtained with  
9       nominal equity contributions, equity purchased with wrongfully-obtained fees, or no equity  
10      contributions at all.

11      334. Following Kabins’ making the respective 99th LLC Investments, the Capri I  
12      Investment, and the Cottonwood Investment, the Chain Consortium, the Managers, and the  
13      Millennium Entities concealed the fact that the Chain Consortium, the Managers, and the  
14      Millennium Entities had taken more than 50 percent of the ownership equity from 99th LLC,  
15      Capri I, and Cottonwood by misrepresenting to Kabins that the basis of ownership of 99th LLC,  
16      Capri, and Cottonwood was the same as for Benessere, Cipriani, and Gila Bend, with respect to  
17      which equity ownership was, allegedly, based solely on cash investment.

18      335. The Chain Consortium, the Managers, and the Millennium Entities used Kabins’  
19      respective 99th LLC Investments, Capri I Investment, and Cottonwood Investment to pay the  
20      Chain Consortium, the Managers, and the Millennium Entities buyer’s commissions not only as  
21      a percentage of Kabins’ invested capital amount, but also as a percentage of the total amount of  
22

1 acquisition financing, *i.e.*, the bank loans used to finance the acquisition of 99th LLC, Capri I,  
2 and Cottonwood.

3 336. From at least as early as 2006, the Chain Consortium, the Managers, and the  
4 Millennium Entities obtained high loan amounts 99th LLC, Capri I, and Cottonwood; took up-  
5 front buyer's commissions from the 99th LLC Investments, the Capri I Investment, and the  
6 Cottonwood Investment based, in large part, on the bank loans; and wasted Kabins' respective  
7 invested money, while gambling that the real estate market might go up and the Chain  
8 Consortium might find a later investor with which to pay the Chain Consortium, the Managers,  
9 and the Millennium Entities—and Kabins—on the back end as well.

10 337. The Chain Consortium, the Managers, and the Millennium Entities invested Kabins'  
11 money in 99th LLC, Capri I, and Cottonwood without disclosing to Kabins that the Chain  
12 Consortium, the Managers, and the Millennium Entities had no replacement or permanent  
13 financing in place and no prospective purchasers identified with respect to 99th LLC, Capri I,  
14 and Cottonwood.

15 338. The Managers' plan with respect to 99th LLC, Capri I, and Cottonwood was to purchase  
16 those properties and resell those properties quickly and at a higher value than the purchase price  
17 before the short-term loans with respect to those properties came due. The Managers and Mr.  
18 Bergman concealed this plan from Kabins by misrepresenting that 99th LLC, Capri I, and  
19 Cottonwood were free and clear of debt, that the Managers had serious plans to develop 99th  
20 LLC, Capri I, and Cottonwood, that Kabins' invested principal in 99th LLC, Capri I, and  
21 Cottonwood was completely safe, and that the Managers, Mr. Bergman, and other insiders would  
22 only receive payments, *e.g.*, commissions or profits, after the successful sale of the property, in

1 accordance with the Inducement Misrepresentations concocted by the Chain Consortium, the  
2 Managers, and the Millennium Entities.

3 339. As of this date, 99th LLC, Capri I, and, Cottonwood have become insolvent and subject  
4 to foreclosure proceedings connected to those properties' respective outstanding loan amounts  
5 because of the Managers' pattern of fraud and failure, at a minimum, to exercise reasonable care  
6 in the undertaking of managing the Millennium Investment Companies, which resulted in  
7 unreasonable risk of harm and far-reaching damages to Kabins.

8 340. The Chain Consortium, the Managers, and the Millennium Entities should have had  
9 back-up financing plans or prospective purchasers, or both, with respect to 99th LLC, Capri I,  
10 and Cottonwood, and the Chain Consortium's, the Managers', and the Millennium Entities'  
11 failure to have such back-up financing plans or prospective purchasers in place with respect to  
12 99th LLC, Capri I, and Cottonwood constitutes a breach of the Chain Consortium's, the  
13 Managers', and the Millennium Entities' duty of care to Kabins.

14 341. If the Chain Consortium, the Managers, and the Millennium Entities had disclosed the  
15 true risks to Kabins of investing in 99th LLC, Capri I, and Cottonwood, the mix of investment  
16 information available to Kabins would have been substantially altered and Kabins would not  
17 have invested in 99th LLC, Capri I, and Cottonwood.

18  
19 **C. Fraud in the Inducement Dates, Locations, and Identities**

20 342. The Chain Consortium, the Managers, and the Millennium Entities agreed to send two  
21 individuals, Mr. Chain and Mr. Bergman, to Dr. Kabins' Place of Business on the following  
22 dates in order to make the Inducement Misrepresentations as agents for the Chain Consortium,



1 the Managers, and the Millennium Entities to induce Kabins to agree to invest money and  
2 purchase securities offered by the Chain Consortium, the Michael's Conspirators, and the  
3 Millennium Investment Companies, and to induce Kabins, subsequently, to write the checks or  
4 wire the money for Kabins' respective investments without Kabins having access to supporting  
5 documentation with respect to those investments, obtaining agreements to invest as follows:

- 6 a. On or about November 1, 2004, Mr. Gutzman, Mr. Bergman and Mr. Chain  
7 fraudulently induced Kabins to agree to invest \$1,000,000.00 in Benessere.
- 8 b. On or about April 20, 2005, Mr. Gutzman, Mr. Bergman and Mr. Chain fraudulently  
9 induced Kabins to agree to invest \$1,000,000.00 in Cipriani.
- 10 c. On or about May 2, 2005, Mr. Bergman and Mr. Chain fraudulently induced Kabins  
11 to agree to invest \$1,000,000.00 in Gila Bend.
- 12 d. On or about February 10, 2006, Mr. Bergman and Mr. Chain fraudulently induced  
13 Kabins to agree to invest \$3,000,000.00 in Michael's.
- 14 e. On or about April 1, 2006, Mr. Bergman and Mr. Chain fraudulently induced Kabins  
15 to agree to invest \$1,000,000.00 in 99th LLC.
- 16 f. On or about February 4, 2007, Mr. Bergman and Mr. Chain fraudulently induced  
17 Kabins to agree to invest an additional \$1,500,000.00 with 99th LLC.
- 18 g. On or about May 1, 2007, Mr. Bergman and Mr. Chain fraudulently induced Kabins  
19 to agree to invest \$2,000,000.00 with Capri I.
- 20 h. On or about July 25, 2007, Mr. Bergman and Mr. Chain fraudulently induced Kabins  
21 to agree to invest \$650,000.00 with Cottonwood.

1 343. Mr. Bergman and Mr. Chain used high-pressure sales tactics to induce Kabins into  
 2 investing in Cottonwood on or about July 25, 2007, and falsely told Kabins on that date that  
 3 Cottonwood would be an investment opportunity exclusive to Kabins and Mr. Chain. Mr.  
 4 Bergman and Mr. Chain further falsely touted Cottonwood as subject to even lower risk and  
 5 higher returns than Benessere, Cipriani, Gila Bend, Michael's, 99th LLC, and Capri I.

6  
 7 **D. Kabins' Payments for Each of the Millennium Investment Companies'**  
 8 **Securities**

9 344. Mr. Bergman and Mr. Chain, as agents for the Managers, the Chain Consortium, the  
 10 Millennium Entities, and each of the Millennium Investment Companies, and through Mr.  
 11 Bergman's and Mr. Chain's respective control over those Defendants, obtained money from  
 12 Kabins based on Kabins' reliance on the Inducement Misrepresentations as follows:

- 13 a. On November 9, 2004, Kabins delivered \$1,000,000.00 to Mr. Chain, with the intent  
 14 that such money serve as Kabins' investment in Buckeye 77 (subsequently,  
 15 Benessere).
- 16 b. On April 27, 2005, Kabins delivered \$200,000.00 to Mr. Chain, in the form of Kabins  
 17 LP's check number 259, with the intent that such money serve as Kabins' investment  
 18 in Buckeye 80 (subsequently, Cipriani).
- 19 c. On May 5, 2005, Kabins delivered \$800,000.00 to Mr. Chain, in the form of Kabins  
 20 LP's check number 550, with the intent that such money serve as Kabins' investment  
 21 in Buckeye 80 (subsequently, Cipriani).

- 1 d. On May 12, 2005, Kabins delivered \$1,000,000.00 to Mr. Chain, in the form of  
2 Kabins LP's check number 552, with the intent that such money serve as Kabins'  
3 investment in Gila Bend.
- 4 e. On February 24, 2006, Kabins delivered \$1,100,000.00, in the form of Kabins LP's  
5 check number 350, to Mr. Chain, on behalf of the Michael's Conspirators and  
6 Michael's, with the intent that such money serve as Kabins' investment in Michael's.
- 7 f. On February 27, 2006, Kabins delivered \$1,000,000.00, in the form of check number  
8 5373 from Dr. Kabins' professional corporation, to Mr. Chain, on behalf of the  
9 Michael's Conspirators and Michael's, with the intent that such money serve as  
10 Kabins' investment in Michael's.
- 11 g. On March 6, 2006, Kabins delivered \$300,000.00, in the form of check number 5374  
12 from Dr. Kabins' professional corporation, to Mr. Chain, on behalf of the Michael's  
13 Conspirators and Michael's, with the intent that such money serve as Kabins'  
14 investment in Michael's.
- 15 h. On or about approximately March 7, 2006, Kabins delivered \$600,000.00 to Mr.  
16 Chain, on behalf of the Michael's Conspirators and Michael's, with the intent that  
17 such money serve as Kabins' investment in Michael's.
- 18 i. On April 10, 2006, Kabins delivered \$500,000.00, in the form of check number 5392  
19 from Dr. Kabins' professional corporation, to Mr. Chain, with the intent that such  
20 money serve as Kabins' investment in 99th LLC.
- 21  
22

- 1 j. On April 10, 2006, Kabins delivered another \$500,000.00, in the form of Kabins LP's  
2 check number 385, to Mr. Chain, with the intent that such money serve as Kabins'  
3 investment in 99th LLC.
- 4 k. On November 30, 2006, Kabins delivered \$35,635.19, in the form of Kabins LP's  
5 check number 753, to Mr. Chain, with the intent that such money serve as Kabins'  
6 investment in 99th LLC.
- 7 l. On February 14, 2007, Kabins delivered \$1,500,000.00, in the form of Kabins LP's  
8 check number 755, to Mr. Chain, with the intent that such money serve as Kabins'  
9 investment in 99th LLC. Kabins received a partial return of \$500,000.00 of this  
10 invested capital on or about February 26, 2007.
- 11 m. On May 10, 2007, Kabins delivered \$2,000,000.00, in the form of Kabins LP's check  
12 number 389, to Mr. Chain, with the intent that such money serve as Kabins'  
13 investment in Capri I.
- 14 n. On August 3, 2007, Kabins delivered \$650,000.00, in the form of LCK Trust check  
15 number 1011, to Mr. Chain, with the intent that such money serve as Kabins'  
16 investment in Cottonwood.
- 17 345. On August 21, 2007, Cottonwood paid \$20,000.00 of LCK Trust's invested money to  
18 Mr. Bergman through T.W.B. as a commission for LCK Trust's investment in Cottonwood, in  
19 breach of the Distribution Misrepresentation and of Mr. Bergman's personal misrepresentations  
20 to Kabins that Mr. Bergman would not be compensated as a result of Kabins' respective  
21 investments.  
22

1       346. On September 24, 2007, Cottonwood paid \$40,000.00 of LCK Trust's invested money  
2 to Mr. Bergman through T.W.B. as a commission for LCK Trust's investment in Cottonwood in  
3 breach of the Distribution Misrepresentation and of Mr. Bergman's personal misrepresentations  
4 to Kabins that Mr. Bergman would not be compensated as a result of Kabins' respective  
5 investments.

6       347. The Chain Consortium, the Managers, and the Millennium Entities obtained Kabins'  
7 invested money by lying about the risks associated with the investments, without presenting  
8 Kabins with a private placement memorandum or any other appropriate investment disclosures  
9 or documentation. The Chain Consortium, the Managers, and the Millennium Entities told  
10 Kabins, through Mr. Bergman and Mr. Chain, that this procedure was normal and typical.

11       348. Kabins reasonably and justifiably relied on Mr. Bergman's and Mr. Chain's  
12 representations that Defendants' procedure was normal and typical because Kabins knew several  
13 attorneys who had relationships with Mr. Chain and Mr. Gutzman who told Kabins that those  
14 attorneys had followed the same procedure for other investments with Mr. Chain and Mr.  
15 Gutzman.

16       349. Kabins' reasonable and justifiable reliance on the serial Inducement Misrepresentations  
17 led Kabins to deliver, over time, a substantial amount of Kabins' savings—approximately \$11  
18 million—to the Managers and the Millennium Investment Companies well before Kabins had an  
19 opportunity to see the Operating Agreements with respect to each of the Millennium Investment  
20 Companies.

1           **E.       Fraud in the Execution or Inception Misrepresentations**

2           350. After the Chain Consortium, the Managers, and the Millennium Entities obtained  
3 Kabins' respective invested money based on the Inducement Misrepresentations, Mr. Bergman  
4 and Mr. Chain, or agents for the Chain Consortium, would return to Dr. Kabins' Place of  
5 Business to obtain Kabins' signatures on investment documents. On those occasions, Mr.  
6 Bergman and Mr. Chain rushed Kabins through the investment documents to obtain Kabins'  
7 signature while maliciously and oppressively telling Kabins that the documents merely reflected  
8 the Inducement Misrepresentations' standard language.

9           351. The Chain Consortium, the Managers, and the Millennium Entities incorporated the  
10 written contractual agreements associated with each Millennium Investment Company as *de*  
11 *facto* exhibits to the Inducement Misrepresentations when, on the dates on which Defendants'  
12 fraud in the execution or inception with respect to Kabins took place, as outlined *infra*, Mr.  
13 Bergman and Mr. Chain, as agents for the Managers, the Chain Consortium, and the Millennium  
14 Investment Companies, maliciously directed Kabins to sign the documents and told Kabins that  
15 the written agreements merely reflected "standard language" documenting the Inducement  
16 Misrepresentations, which Mr. Bergman and Mr. Chain knew was fraudulent (the "Execution  
17 Misrepresentation").

18           352. Because Mr. Chain and Mr. Bergman, as agents for the Managers, the Chain  
19 Consortium, and the Millennium Investment Companies, encouraged and intended Kabins to  
20 sign each of the sets of documents for each of the Millennium Investment Companies without  
21 reading the documents, the Managers, the Chain Consortium and the Millennium Investment  
22

1 Companies materially omitted the terms in the documents that varied from the Inducement  
2 Misrepresentations.

3 353. The Managers, the Chain Consortium, and the Millennium Investment Companies had a  
4 duty to speak, based, at a minimum, on the Managers', the Chain Consortium's, and the  
5 Millennium Investment Companies' fiduciary relationships with Kabins, to tell Kabins about the  
6 written terms that varied from the oral Inducement Misrepresentations, because a reasonable  
7 investor would have considered, as Kabins did consider, those material omissions as  
8 substantially altering the mix of information Kabins considered for investing in each of the  
9 Millennium Investment Companies.

10 354. After Kabins relied on the Managers' Inducement Misrepresentations and Kabins  
11 delivered money to the Chain Consortium, the Managers, and the Millennium Entities in reliance  
12 on the Inducement Misrepresentations, Mr. Bergman and Mr. Chain traveled once again to Dr.  
13 Kabins' Place of Business to obtain Kabins' signatures on the Operating Agreements, which set  
14 forth additional misrepresentations, inconsistencies, and inaccuracies with respect to Kabins'  
15 investments in, and the operations of, the respective Millennium Investment Companies.

16 355. The Inducement Misrepresentations and the Execution Misrepresentations are  
17 collectively referred to as the "Collective Misrepresentations."

18  
19 ***F. Fraud in the Execution or Inception Identities, Location, and Dates***

20 356. As agents for the Managers, the Chain Consortium, and the Millennium Investment  
21 Companies, Mr. Chain and Mr. Bergman traveled to Dr. Kabins' Place of Business and acquired  
22 Kabins' signatures on each of the Operating Agreements purporting to memorialize the

1 Inducement Misrepresentations and to memorialize Kabins' membership in each of the  
2 Millennium Investment Companies.

3 357. The Operating Agreements were entirely different in character and nature from what  
4 Mr. Chain and Mr. Bergman had represented to Kabins, but Mr. Chain and Mr. Bergman  
5 maliciously and oppressively concealed the content of the Operating Agreements by making the  
6 Execution Misrepresentation.

7 358. The Operating Agreements demonstrate that Defendants did not have a legitimate  
8 business plan, but simply wanted to provide the appearance of legitimacy to cover up  
9 Defendant's artifice with illegitimate documentation, designed to gain Kabins' confidence and to  
10 help Defendants conceal the fact that Defendants had taken millions of dollars worth of up-front  
11 commissions and fees by taking Kabins' invested dollars and disbursing substantial amounts to  
12 the Chain Consortium.

13 359. On behalf of the Defendants, Mr. Chain and Mr. Bergman scheduled times of the day  
14 for Kabins to sign the investment documents when Kabins would be at Dr. Kabins' Place of  
15 Business and when Dr. Kabins would otherwise be busy servicing patients and not at liberty to  
16 engage in detailed review and analysis of the Operating Agreements and other investment  
17 documents.

18 360. On or about April 20, 2006, Mr. Chain and Mr. Bergman acquired Kabins' signature on  
19 documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and Mr.  
20 Bergman's oral Inducement Misrepresentations regarding 99th LLC.

21 361. On or about January 25, 2007, Mr. Chain and Mr. Bergman acquired Kabins' signature  
22 on documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and



1 Mr. Bergman's oral Inducement Misrepresentations regarding the 99th LLC Amended and  
2 Restated Operating Agreement stating that the value of Kabins' equity position was  
3 \$1,032,387.44.

4 362. On or about October 30, 2007, Kabins received page 24 of the 99th LLC Amended and  
5 Restated Operating Agreement, which stated that the value of Kabins' equity position in 99th  
6 LLC was \$2,532,387.44.

7 363. On or about November 20, 2004, Mr. Chain and Mr. Bergman acquired Kabins'  
8 signature on documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr.  
9 Chain's and Mr. Bergman's oral Inducement Misrepresentations regarding Benessere.

10 364. On or about May 20, 2007, Mr. Chain and Mr. Bergman acquired Kabins' signature on  
11 documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and Mr.  
12 Bergman's oral Inducement Misrepresentations regarding Capri I.

13 365. On or about May 25, 2005, Mr. Chain and Mr. Bergman acquired Kabins' signature on  
14 documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and Mr.  
15 Bergman's oral Inducement Misrepresentations regarding Cipriani.

16 366. On or about August 13, 2007, Mr. Chain and Mr. Bergman acquired Kabins' signature  
17 on documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and  
18 Mr. Bergman's oral Inducement Misrepresentations regarding Cottonwood.

19 367. On or about May 25, 2005, Mr. Chain and Mr. Bergman acquired Kabins' signature on  
20 documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and Mr.  
21 Bergman's oral Inducement Misrepresentations regarding Gila Bend.  
22

1 368. On or about June 15, 2006, Mr. Chain and Mr. Bergman acquired Kabins' signature on  
2 documents that Mr. Chain and Mr. Bergman misrepresented as embodying Mr. Chain's and Mr.  
3 Bergman's oral Inducement Misrepresentations regarding Michael's.

4 369. If the Chain Consortium, or the Managers, or the Millennium Investment Companies,  
5 had disclosed the fact that each of the Millennium Investment Companies carried extremely high  
6 risks of loss, pursuant to the short-term plans to "flip" the properties, Kabins would not have  
7 invested in any of the Millennium Investment Companies.

8 370. The Chain Consortium, the Managers, and the Millennium Entities knew that, if Kabins  
9 had understood the true risks associated with investment in any of the Millennium Investment  
10 Companies, the Chain Consortium, the Managers, and the Millennium Entities would not have  
11 been able to pay themselves exorbitant commissions and expenses from Kabins' respective  
12 invested money, and would not have been able to commingle Kabins' respective money with  
13 money belonging to the Misappropriation Beneficiaries.

14  
15 **G. Fraud in the Offering Documents**

16 371. The documentation created by the Chain Consortium, the Managers, and the  
17 Millennium Entities, delivered to Kabins by Mr. Chain and Mr. Bergman in connection with  
18 each of Kabins' respective investments in the Millennium Investment Companies, typically  
19 including a "Deal Structure Memorandum," an "Executive Summary," "Risk Factors," and a  
20 "Contribution Agreement," as well as that respective Millennium Investment Company's  
21 Operating Agreement" (collectively, the "Offering Documents"), as well as subsequent  
22

1 correspondence from the Managers (the “Correspondence”), contained numerous  
2 misrepresentations and material omissions (the “Document-Based Fraud”).

3 372. The Document-Based Fraud is based on material terms that Defendants did not disclose  
4 to Kabins at all, or that Defendants inadequately disclosed, as well as misrepresentations  
5 expressly set forth in the Offering Documents and the Correspondence.

6 373. The Offering Documents with respect to Michael’s, 99th LLC, Capri I, and Cottonwood  
7 purport to disclose loans, contrary to the Free and Clear Misrepresentation.

8 374. Defendants’ subsequent disclosures as set forth in the Offering Documents regarding the  
9 loans with respect to Michael’s, 99th LLC, Capri I, and Cottonwood are misleading and  
10 fraudulent, in that Defendants did not disclose in the Offering Documents material terms of the  
11 acquisition loans with respect to Michael’s, 99th LLC, Capri I, and Cottonwood to Kabins, such  
12 as those loans’ maturity dates and default provisions.

13 375. The Chain Consortium, the Managers, and the Millennium Entities intentionally,  
14 maliciously, and oppressively failed to disclose to Kabins the fact that the acquisition loans with  
15 respect to Michael’s, 99th LLC, Capri I, and Cottonwood were short-term, which constituted  
16 additional material omissions, given that the short-term nature of those acquisition loans made the  
17 investments in Michael’s, 99th LLC, Capri I, and Cottonwood extremely risky because those  
18 properties had to be sold almost immediately or else be lost to foreclosure.

19 376. The Offering Documents provided grossly inadequate, if any, disclosure of fees and  
20 commissions to be paid to the Defendants, and in some cases the Offering Documents failed to  
21 disclose that buyer’s commissions were paid to the Chain Consortium, the Managers, and the  
22

1 Millennium Entities, not merely as a percentage of Kabins' invested capital, but also as a  
2 percentage of total acquisition loans.

3 377. The check registers for the Millennium Investment Companies show substantial  
4 unauthorized payments to the Defendants in breach of the written representations set forth in the  
5 Offering Documents.

6 378. Section 7.04 of the 99th LLC Operating Agreement provided that the Managing  
7 Member of 99th LLC was to receive no fees for services, except for the buyer's commission, but  
8 the Chain Consortium, the Managers, and the Millennium Entities took fees inappropriately in  
9 contravention of that section of the 99th LLC Operating Agreement, further diluting the  
10 Millennium Investment Companies' and Kabins' invested capital, while the Defendants routinely  
11 reported to Kabins, through tax forms and correspondence, that all of Kabins' invested principal  
12 had been preserved.

13 379. The Chain Consortium, the Managers, and the Millennium Entities set forth numerous  
14 misrepresentations in the Offering Documents regarding development plans for the real property  
15 owned by the respective Millennium Investment Companies, when, in fact, there were no  
16 feasible plans to develop any of the real property owned by the respective Millennium  
17 Investment Companies.

18 380. The section of each Operating Agreement regarding distributions demonstrates that the  
19 Chain Consortium, the Managers, and the Millennium Entities' sole intent was to sell those  
20 respective properties in the short term, with no buyers lined up in advance, a very risky  
21 procedure referred to as "flipping."  
22

1       381. The Offering Documents demonstrate the Managers' and the Chain Consortium's plans  
2 to sell each of the properties owned by the respective Millennium Investment Companies and  
3 wrap up all loans, expenses and distributions at the same time as those properties were sold,  
4 rather than to operate those properties as going concerns.

5       382. Where additional capital was or would be needed with respect to a Millennium  
6 Investment Company, the Defendants failed to provide in the Offering Documents with respect  
7 to that Millennium Investment Company a method for calculating the dilution of ownership  
8 interests that would occur if Kabins chose not to contribute additional capital.

9       383. The Managers ensured in the Offering Documents for each Millennium Investment  
10 Company that the Managers' ownership interests in each of the respective Millennium  
11 Investment Companies would not be diluted under any circumstances.

12       384. The Chain Consortium, the Managers, and the Millennium Entities intentionally and  
13 maliciously intended to provide for the dilution of Kabins' ownership interests in the respective  
14 Millennium Investment Companies if Kabins declined to contribute additional capital, while the  
15 Defendants intended to ensure no corresponding dilution for the Defendants' ownership interests  
16 in the respective Millennium Investment Companies if the Defendants declined to contribute  
17 additional capital.

18       385. The Defendants intentionally, maliciously, oppressively, and fraudulently concealed  
19 Defendants' provisions for the dilution of Kabins' ownership interest and the non-dilution of the  
20 Defendants' ownership interests (the "Dilution Provisions") from Kabins in connection with  
21 Kabins' purchase of the securities for 99th LLC, which constituted another material omission on  
22 the part of the Defendants.

1       386. If the Managers had disclosed the Dilution Provisions to Kabins, Kabins would not have  
2 invested in 99th LLC, because that information would have substantially altered the mix of  
3 information available to Kabins.

4       387. 99th LLC is now insolvent, with Kabins' investment in 99th LLC of approximately  
5 \$2.53 million now lost.

6       388. The Defendants failed to disclose in the Offering Documents that, except in the event of  
7 net profits, which never occurred, all economic losses would be allocated to Kabins and other  
8 cash investors, but not to the Managers (the "Loss Allocation Omission").

9       389. In order for Kabins to have ascertained the existence of the Loss Allocation Omission,  
10 Kabins would have had to engage in sophisticated analysis of the Offering Documents under  
11 federal tax regulations.

12       390. The Managers knew that Kabins did not possess high-level tax analysis skills and the  
13 Managers intentionally concealed the Loss Allocation Omission, when the Managers should  
14 have explained to Kabins the nature and existence of the economic loss allocation with respect to  
15 the Millennium Investment Companies because that information would have substantially altered  
16 the mix of information available to Kabins in Kabins' respective decisions to invest in the  
17 respective Millennium Investment Companies.

18       391. The Managers knew that Kabins would not invest under such unfair circumstances, if  
19 those circumstances had been known to Kabins, and Kabins would thus not have invested in the  
20 respective Millennium Investment Companies if the Managers or the Chain Consortium had  
21 disclosed the Loss Allocation Omission to Kabins.

1       392. The Document-Based Fraud with respect to Cipriani included a plan to form a master  
2 limited-liability company that would ultimately consolidate 41 different adjacent properties held  
3 by 41 different LLCs named “Buckeye” into one parent limited-liability company (the  
4 “Consolidation”).

5       393. Contrary to §7.03(q) of the Cipriani Operating Agreement, when the Consolidation  
6 occurred, there was no book-up to fair market value of the value of Kabins’ investment in  
7 Buckeye 80, which provided more recent investors with a higher capital margin as part of a  
8 scheme intended at the time of Kabins’ investment and creation of cost basis in Buckeye 80. The  
9 Chain Consortium, the Managers, and the Millennium Entities did not account for unwarranted  
10 dilution of Kabins’ unrealized appreciation existing at the time of the Consolidation, as  
11 compared to other Buckeye 80 investors that obtained interests in Buckeye 80 after Kabins.

12       394. One member of 99th LLC, the Boyce Family Trust (“Boyce”) wanted to sell Boyce’s  
13 ownership interest in 99th LLC (the “Boyce Interest”). Mr. Chain, Mr. Gutzman and Mr.  
14 Martinez delivered letters to Kabins dated November 21, 2006, January 19, 2007 and February 1,  
15 2007 (the “Boyce Letters”) explaining that Kabins had a right to purchase a portion of the Boyce  
16 Interest.

17       395. Kabins did purchase a portion of the Boyce Interest.

18       396. Mr. Chain, Mr. Gutzman and Mr. Martinez did not disclose to Kabins in the Boyce  
19 Letters the fact that Kabins’ increased ownership in 99th LLC after Kabins purchased a portion  
20 of the Boyce Interest would increase the share of additional capital that would thereafter be  
21 required for Kabins to purchase a second portion of the Boyce Interest, or another portion of  
22

1 ownership interest in 99th LLC, without suffering onerous dilution of Kabins' ownership interest  
2 in 99th LLC.

3 397. The Boyce Letters were fraudulent and misleading, and Kabins relied on Mr. Chain's,  
4 Mr. Gutzman's and Mr. Martinez's misrepresentations as set forth in the Boyce Letters, which  
5 caused Kabins to lose a portion of Kabins' respective investment with respect to the Boyce  
6 Interest.

7 398. Letters dated November 21, 2006, February 1, 2007 and February 12, 2007 from Mr.  
8 Chain, Mr. Gutzman, and Mr. Martinez regarding 99th LLC (the "99th LLC Letters") fail to  
9 disclose the method of dilution to be employed in connection with a call for additional capital for  
10 purchasing a second parcel of land, and for not disclosing that purchasing a second parcel of land  
11 would increase Kabins' share of the additional capital required for purchase of a second parcel of  
12 the Boyce Interest without Kabins consequently suffering from Defendants' oppressive and  
13 undisclosed dilution methods.

14 399. The 99th LLC Letters also include the misleading statement that purchasing the related  
15 portion of Boyce's accrued 12 percent preferred return would constitute a "prepayment" of  
16 interest and that Kabins would be reimbursed for such "prepayment," when such reimbursement  
17 would not in fact occur if not enough funds remained available for 99th LLC's investors to  
18 receive those investors' full preferred returns in the future.

19 400. The 99th LLC Letters, which were delivered via United States mail within ten (10)  
20 years of each other, constitute mail fraud in violation of 18 U.S.C. §1341 and thus constitute  
21 predicate acts under the Racketeering Influenced and Corrupt Organizations Act ("RICO").  
22



1       401. Where additional capital was or would be needed with respect to a Millennium  
2 Investment Company, the Offering Documents with respect to that respective Millennium  
3 Investment Company did not adequately disclose the method of dilution that would occur if  
4 Kabins chose not to contribute additional capital to that respective Millennium Investment  
5 Company.

6       402. With respect to 99th LLC, the Managers required additional capital for purchasing a  
7 second parcel of land. The Managers did not disclose until after the time the Managers called for  
8 that additional capital the method by which the Managers would calculate the dilution of the 99th  
9 LLC investors' pre-existing interests in 99th LLC.

10       403. The Chain Consortium, the Managers, and the Millennium Entities intentionally  
11 concealed from Kabins, at the time Kabins made Kabins' respective initial investment in 99th  
12 LLC, the method by which the Managers would calculate the dilution of the 99th LLC investors'  
13 pre-existing interests in 99th LLC following a call for additional capital.

14       404. The method of dilution of the 99th LLC investors' pre-existing interests ultimately used  
15 by the Managers, not anticipated by Kabins, later created economic compulsion for Kabins to  
16 contribute additional capital to 99th LLC because of the non-disclosed, detrimental method of  
17 dilution unilaterally imposed by the Managers.

18       405. The Chain Consortium's, the Managers', and the Millennium Entities' omissions with  
19 respect to the potential requirement for additional capital with respect to 99th LLC, and with  
20 respect to the method of dilution of pre-existing investors' interests in 99th LLC following a call  
21 for such additional capital, were material omissions, which substantially altered the general mix  
22 of information to Kabins such that Kabins would not have invested in 99th LLC if the Chain

1 Consortium, the Managers, and the Millennium Entities had disclosed the potential additional  
2 capital requirement and the intended method of dilution with respect to 99th LLC.

3  
4 ***H. Additional Fraud-Related Facts***

5 406. As a part of the Chain Consortium's, the Managers', and the Millennium Entities'  
6 fraudulent scheme, the Managers misrepresented the declining value of Kabins' principal by  
7 delivering to Kabins, through the United States mail, K-1s and reports with respect to each  
8 respective Millennium Investment Company showing the exact cash value Kabins had invested  
9 in that respective Millennium Investment Company rather the actual reduced and declining value  
10 of Kabins' investments in that respective Millennium Investment Company.

11 407. The actual value of Kabins' investments in each Millennium Investment Company,  
12 which, with respect to each Millennium Investment Company, resulted from a combination of  
13 the Chain Consortium's, the Managers', and the Millennium Entities' concealment of up-front  
14 commissions, high fees and expenses, lack of any viable business plan, and general declining  
15 market values, at a minimum.

16 408. The Chain Consortium's, the Managers', and the Millennium Entities'  
17 misrepresentations regarding the actual value of Kabins' respective investments in each  
18 respective Millennium Investment Company began to occur almost immediately after each  
19 respective investment by Kabins in each respective Millennium Investment Company, when each  
20 of the Millennium Investment Companies began losing substantial value.

21 409. The Chain Consortium, the Managers, and the Millennium Entities intentionally,  
22 maliciously, and oppressively delayed Kabins' ability to discover the Chain Consortium's, the

1 Managers', and the Millennium Entities' fraud and other wrongs by concealing the facts that  
2 would have enabled Kabins to discover the fraud and other wrongs upon occurrence.

3 410. Kabins did not discover the fraud and other wrongs perpetrated by the Chain  
4 Consortium, the Managers, and the Millennium Entities with respect to Kabins' respective  
5 investments in the Millennium Investment Companies until in or about January 2009, after  
6 approximately two months of due diligence, when Kabins was able to examine the Millennium  
7 Investment Companies' check registers and financial statements, as well as other evidence of the  
8 Managers' and the Chain Consortium's fraudulent scheme.

9 411. In or about October 2008, after reviewing the Millennium Investment Companies'  
10 portfolio assembled by the Millennium Entities and the Chain Consortium, Kabins questioned  
11 Mr. Bergman and Mr. Chain about the risk of loss of Kabins' principal.

12 412. In response, on or about October 27, 2008, Mr. Chain and Mr. Bergman again  
13 intentionally concealed the risks associated with Kabins' respective investments in a effort to  
14 delay Kabins from discovering the Chain Consortium's, the Millennium Entities', and the  
15 Managers' fraudulent scheme by giving Kabins a "personal guarantee" [*sic*], signed by Mr.  
16 Chain on behalf of "Jeff Chain and Millennium Properties and Development Inc.," verbally  
17 verified by Mr. Bergman, and notarized on November 4, 2008 by Ms. Elida Davila ("Mr.  
18 Chain's Guaranty"), attached hereto and incorporated herein as Exhibit 8, insuring Kabins from  
19 all losses of principal associated with each Millennium Investment Company.

20 413. Mr. Chain provided Mr. Chain's Guaranty to demonstrate that Kabins should continue  
21 to rely, at a minimum, on the Liquidity Misrepresentation and the Principal Protection  
22 Misrepresentation.

1       414. Mr. Bergman and Mr. Chain told Kabins in writing that Mr. Chain's Guaranty must  
2 remain "strictly confidential" and that Mr. Chain's Guaranty was just for "Kabins and *not to any*  
3 *other investors*" (emphasis added).

4       415. Mr. Chain completely disregarded any separate entity of Mr. Chain in making Mr.  
5 Chain's Guaranty to Kabins by preparing Mr. Chain's Guaranty on Millennium letterhead, and  
6 signing Mr. Chain's Guaranty personally and as Millennium's "President."

7       416. At or about the same time as Mr. Chain issued Mr. Chain's Guaranty, Mr. Bergman told  
8 Kabins that Kabins should trust Mr. Chain because Mr. Chain "is the man," as Mr. Bergman  
9 touted Mr. Chain's ability to manage Kabins' portfolio.

10       417. At the same time Mr. Chain was executing Mr. Chain's Guaranty for Kabins, Mr. Chain  
11 failed to disclose to Kabins that Mr. Chain was in the process of confessing a judgment for  
12 \$5,000,000 in November 2008, which, according to recent assertions by Mr. Chain, caused Mr.  
13 Chain to become insolvent.

14       418. In late December 2008, Mr. Chain further misrepresented the value of exchanges Mr.  
15 Chain could offer to Kabins for Kabins' equity positions in 99th LLC, Cottonwood, Capri I, and  
16 Michael's.

17       419. Subsequently, on January 5, 2009, Mr. Chain offered to purchase Kabins' equity in 99th  
18 LLC and Cottonwood with cash from Mr. Chain as the "President" of Millennium, but Mr. Chain  
19 failed to follow through with those offers, and subsequently refused to return Kabins' telephone  
20 calls and electronic mail communications.

21       420. Kabins was damaged by Defendants' fraud because, of the seven companies comprising  
22 the Millennium Investment Companies, 99th LLC, Capri I, Cottonwood, and Michael's are all

1 insolvent; Benessere, Cipriani, and Gila Bend have lost nearly all of Benessere's, Cipriani's, and  
2 Gila Bend's respective equity; and the Managers have begun leveraging, at a minimum, Cipriani,  
3 for millions of dollars.

4  
5 ***I. Alter Ego Allegations***

6 421. The individual Defendants used the entities owned by those individual Defendants, or  
7 otherwise affiliated with the Chain Consortium, to perpetuate, as mere alter egos of the Chain  
8 Consortium, fraud on Kabins.

9 422. The Chain Consortium consistently disregarded the separateness of the entities owned  
10 by the members of the Chain Consortium, or otherwise affiliated with the Chain Consortium, in  
11 correspondence and documentation furnished to Kabins. For example, with respect to 99th LLC,  
12 Chain Consortium partners Mr. Chain, Mr. Gutzman, and Mr. Martinez routinely referred to Mr.  
13 Chain, Mr. Gutzman, and Mr. Martinez individually as "managing members," when the  
14 members of the Chain Consortium were not *de jure* managers of 99th LLC—instead, 99th  
15 Management was the manager of 99th LLC.

16 423. The entities owned by members of, or otherwise affiliated with, the Chain Consortium  
17 were not sufficiently capitalized to carry out the business those entities were purportedly  
18 designed to accomplish, *i.e.*, successful sale of each of the Millennium Investment Companies.  
19 As a result, many of the entities owned by members of, or otherwise affiliated with, the Chain  
20 Consortium have fallen into default or insolvency.

21 424. The Chain Consortium general partners' agreement to defraud Kabins is evidenced by  
22 the general partners' signatures on the Operating Agreements, and by disbursements made to the

1 Chain Consortium's general partners and the Chain Consortium's general partners' affiliated  
2 entities taken from Kabins' invested capital.

3 425. The Defendant entities disregarded the Defendant entities' separateness by routinely  
4 commingling money when paying bills for one another, and by receiving disbursements from  
5 each other, as evidenced by the Millennium Investment Companies' check registers. For  
6 example, Millennium, by and through Mr. Chain and/or Mrs. Chain, caused each one of the  
7 seven Millennium Investment Companies to pay bills for Millennium. Additional representative  
8 examples of commingling occurred as follows, without limitation:

9 a. In 2007 and 2008, 99th LLC paid bills and made disbursements out of 99th LLC's  
10 accounts to Millennium, to Innovative, to MCP, and to GEIII, as well as to Mr.  
11 Gutzman and Mr. Martinez individually.

12 b. In 2006, 2007, and 2008, Benessere paid bills and made disbursements out of  
13 Benessere's accounts to Millennium, to Innovative, to MCP, and to GEIII, as well as  
14 to Mr. Gutzman and Mr. Martinez individually.

15 c. In 2006, 2007, and 2008, Benessere commingled funds with, at a minimum, one other  
16 Millennium Investment Company, specifically, Cipriani.

**FIRST CAUSE OF ACTION**

**FEDERAL SECURITIES LAW VIOLATIONS UNDER 17 C.F.R. § 240.10b-5**

**(Against All Defendants)**

426. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

427. Mr. Chain, Mr. Bergman, and Mr. Gutzman, as general partners and agents of the Chain Consortium, the Managers, the Millennium Entities, and each of the Millennium Investment Companies, created and conspired to deliver the Collective Misrepresentations to Kabins in connection with offers to sell securities in the Millennium Investment Companies.

428. When the Defendants made the Collective Misrepresentations to Kabins, the Defendants made false or misleading statements of a material fact to Kabins with malice and the intent to oppress and defraud Kabins, while taking substantial amounts of Kabins' respective invested money from Nevada across state lines to Arizona, and/or through the wires or United States mail.

429. The Defendants knew, or had reasonable grounds to believe, that the Collective Misrepresentations were misleading to Kabins because the Defendants knew, before Kabins invested money, respectively, in each of the Millennium Investment Companies, that the Defendants intended to pay to the Defendants undisclosed up-front commissions, fees, and reimbursements, and to commingle parts of Kabins' invested capital to fund the Defendants' Misappropriation Beneficiaries.

430. When the Defendants made the Collective Misrepresentations to Kabins, the Defendants, with malice and oppression, fraudulently omitted to state material facts necessary in order to make the Collective Misrepresentations not misleading to Kabins in light of the circumstances under which the Defendants made the Collective Misrepresentations, *e.g.*, that the

1 Defendants would protect Kabins' invested capital against up-front disbursements, payments,  
2 fees, and commissions to the Defendants, as well as protect Kabins' invested capital against any  
3 leverage risk. These material omissions substantially altered the mix of available information  
4 such that Kabins would not have invested in any of the Millennium Investment Companies if the  
5 Defendants had disclosed the material omissions to Kabins.

6 431. The Defendants knew, or had reasonable grounds to believe, that the Collective  
7 Misrepresentations omitted material facts necessary in order to make the Collective  
8 Misrepresentations not misleading to Kabins in light of the circumstances under which the  
9 Defendants made the Collective Misrepresentations, specifically, that the Defendants maliciously  
10 and oppressively concealed clandestine agreements to pay themselves up-front commissions  
11 directly and through sham entities, and Defendants knew that Kabins' invested capital was  
12 subject to substantial risk of loss.

13 432. Kabins did not know, and, with the exercise of reasonable diligence, could not have  
14 known, about the up-front commissions, the risks to Kabins' invested capital, or the truth about  
15 the Collective Misrepresentations.

16 433. Kabins justifiably relied on the Collective Misrepresentations because the Defendants  
17 touted the partners of the Chain Consortium, the Managers, and the Millennium Entities as  
18 experts in real property investments, and Kabins justifiably relied on the Chain Consortium's, the  
19 Managers', and the Millennium Entities' misrepresentations, purported experience, and active  
20 roles in managing the Millennium Investment Companies.

21 434. The Defendants' Collective Misrepresentations separately and collectively caused  
22 Kabins to invest in each of the Millennium Investment Companies.



1 435. The Defendants' misrepresentations and omissions with respect to the Collective  
2 Misrepresentations were material because the Defendants' Collective Misrepresentations and  
3 omissions with respect to the Millennium Investment Companies directly and proximately  
4 caused substantial damages to Kabins, in an amount to be determined at trial.

5 436. As a direct and proximate result of Defendants' violations of 17 C.F.R. §240.10b-5,  
6 Kabins sustained damages in an amount to be determined at trial.

7 437. Defendants could reasonably foresee that the complexities of Defendants' fraud would  
8 require Kabins to hire and retain attorneys, incurring substantial attorneys' fees and costs, and  
9 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
10 same.

11 438. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
12 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
13 intentional misconduct.

14  
15 **SECOND CAUSE OF ACTION**

16 **CONSPIRACY TO COMMIT SECURITIES FRAUD**

17 **(Against All Defendants)**

18 439. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

19 440. Each general partner of the Chain Consortium conspired and agreed with one another  
20 and with the Managers, the Millennium Entities, and the Millennium Investment Companies to  
21 create the fraudulent scheme and to commit acts in furtherance of Defendants' pattern of  
22 securities fraud against Kabins at least seven (7) times over a period of four (4) years.

1 441. The Defendants' agreement to conspire is evidenced, at a minimum, by the Operating  
2 Agreements for each of the Millennium Investment Companies and the disbursements flowing to  
3 the conspirators from the Millennium Investment Companies and the conspirators' shell  
4 companies.

5 442. Defendants could reasonably foresee that the complexities of Defendants' fraud would  
6 require Kabins to hire and retain attorneys, incurring substantial attorneys' fees and costs, and  
7 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
8 same.

9 443. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
10 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
11 intentional misconduct.

12  
13 **THIRD CAUSE OF ACTION**

14 **CIVIL CONSPIRACY**

15 **(Against All Defendants)**

16 444. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

17 445. The Defendants agreed to act in concert with each other, and, individually and  
18 collectively, intended to accomplish the unlawful objective of fraudulently selling securities to  
19 Kabins for each of seven (7) separate companies, specifically the Millennium Investment  
20 Companies, based on the fraudulent, malicious, and oppressive Collective Misrepresentations.

21 446. The Defendants conspired with one another to defraud Kabins, respectively, on each of  
22 the dates of Kabins' respective investments in each of the Millennium Investment Companies.

1 447. The Defendants conspired to induce Kabins to continue to rely on Defendants'  
2 misrepresentations and fraudulent reports, including year-end K-1 tax forms, to prevent or delay  
3 Kabins from discovering the Defendants' fraudulent schemes.

4 448. The natural-person Defendants are individually liable for concert of action with the  
5 Managers, the Millennium Entities, and the Millennium Investment Companies, because the  
6 natural-person Defendants used the natural-person Defendants' alter egos to perpetuate a fraud.

7 449. The Chain Consortium, the Managers, and the Millennium Entities conspired with Mr.  
8 Bergman, Mr. Chain, and Mr. Gutzman in fraudulently obtaining Kabins' respective  
9 investments.

10 450. Mr. Bergman and Mr. Chain conspired with the Managers and the Millennium Entities  
11 in implementing the fraudulent scheme against Kabins.

12 451. Each of the Millennium Investment Companies conspired with the Managers and the  
13 Millennium Entities in breaching fiduciary duties to Kabins and in perpetuating the fraudulent  
14 scheme against Kabins.

15 452. Each of the Defendants conspired with the Millennium Investment Companies and the  
16 Millennium Entities in perpetuating the fraudulent scheme against Kabins.

17 453. Defendants could reasonably foresee that the complexities of Defendants' civil  
18 conspiracy would require Kabins to hire and retain attorneys, incurring substantial attorneys'  
19 fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs incurred  
20 herein as a result of same.

1 454. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
2 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
3 intentional misconduct.

4  
5 **FOURTH CAUSE OF ACTION**

6 **CONCERT OF ACTION**

7 **(Against All Defendants)**

8 455. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

9 456. Defendants acted in concert with one another, at a minimum, to commit fraud while  
10 pursuing the common design created by the Chain Consortium, the Millennium Entities, the  
11 Managers, and the Millennium Investment Companies.

12 457. The natural-person Defendants are individually liable for concert of action with the  
13 Managers, the Millennium Entities, and the Millennium Investment Companies, because the  
14 natural-person Defendants used the natural-person Defendants' alter egos to perpetuate a fraud.

15 458. The Chain Consortium, the Managers, and the Millennium Entities operated in concert  
16 with Mr. Bergman and Mr. Chain in fraudulently obtaining Kabins' respective investments.

17 459. The Michael's Conspirators operated in concert with the Millennium Entities in  
18 fraudulently obtaining Kabins' investments.

19 460. Mr. Bergman, Mr. Chain, and Mr. Gutzman operated in concert with the Millennium  
20 Investment Companies and the Millennium Entities in implementing the fraudulent scheme  
21 against Kabins.

1       461. Each of the Millennium Investment Companies operated in concert with the Managers  
2 and the Millennium Entities in breaching fiduciary duties to Kabins and in perpetuating the  
3 fraudulent scheme against Kabins.

4       462. Each of the Defendants operated in concert with the Millennium Investment Companies  
5 and the Millennium Entities in perpetuating the fraudulent scheme against Kabins.

6       463. The Defendants could reasonably foresee that the complexities of the concert of action  
7 created by the Defendants would require Kabins to hire and retain attorneys, incurring substantial  
8 attorneys' fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs  
9 incurred herein as a result of same.

10       464. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
11 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
12 intentional misconduct.

13  
14                   **FIFTH CAUSE OF ACTION**

15                   **AIDING AND ABETTING**

16                   **(Against All Defendants)**

17       465. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

18       466. Each of the Defendants substantially assisted or encouraged one another's conduct,  
19 through direct communication or conduct in close proximity to each other, in breaching the  
20 following duties owed by Defendants to Kabins:

1       467. The Managers, the Chain Consortium, and the Millennium Entities aided and abetted  
2 the breaches of the duty of care owed to Kabins by each of the Millennium Investment  
3 Companies.

4       468. The Managers, the Chain Consortium, and the Millennium Entities aided and abetted  
5 the breaches of the duty of loyalty owed to Kabins by each of the Millennium Investment  
6 Companies.

7       469. The Managers, the Chain Consortium, and the Millennium Entities aided and abetted  
8 the breaches of the duty of good faith and fair dealing owed to Kabins by each of the Millennium  
9 Investment Companies.

10       470. The Chain Consortium, and the Millennium Entities aided and abetted the breaches of  
11 the duty of care, the duty of loyalty, and the duty of good faith and fair dealing owed to Kabins  
12 by each of the Managers.

13       471. Each of the Defendants assisted or encouraged the Millennium Entities, the Managers,  
14 and the Millennium Investment Companies in breaching the duties of care, loyalty, and good  
15 faith and fair dealing owed to Kabins by the Millennium Entities, the Managers, and the  
16 Millennium Investment Companies.

17       472. Each of the Managers, the Millennium Entities, and each of the Millennium Investment  
18 Companies owed fiduciary duties to Kabins based on the relationships created by the Managers  
19 and the Millennium Entities, between the Managers, the Millennium Investment Companies, the  
20 Millennium Entities, and Kabins.

1 473. The natural-person Defendants are individually liable for aiding and abetting the  
2 Managers, the Millennium Entities, and the Millennium Investment Companies, because the  
3 natural-person Defendants used the natural-person Defendants' alter egos to perpetuate a fraud.

4 474. The Chain Consortium, the Managers, and the Millennium Entities aided and abetted  
5 Mr. Bergman and Mr. Chain in fraudulently obtaining Kabins' respective investments.

6 475. Mr. Bergman and Mr. Chain aided and abetted the Managers and the Millennium  
7 Entities in implementing the fraudulent scheme against Kabins.

8 476. Each of the Millennium Investment Companies and the Millennium Entities aided and  
9 abetted the Managers in breaching fiduciary duties to Kabins and in perpetuating the fraudulent  
10 scheme against Kabins.

11 477. Each of the Defendants aided and abetted the Millennium Investment Companies and  
12 the Millennium Entities in perpetuating the fraudulent scheme against Kabins.

13 478. The Defendants could reasonably foresee that the complexities of aiding and abetting  
14 created by the Defendants would require Kabins to hire and retain attorneys, incurring substantial  
15 attorneys' fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs  
16 incurred herein as a result of same.

17 479. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
18 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
19 intentional misconduct.

**SIXTH CAUSE OF ACTION**

**FRAUDULENT OR INTENTIONAL MISREPRESENTATION**

**(Against All Defendants)**

480. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

481. Mr. Bergman, Mr. Chain and Mr. Gutzman were agents for the Millennium Entities, the respective Managers of the Millennium Investment Companies, and the Chain Consortium at the times Mr. Bergman, Mr. Chain, and Mr. Gutzman delivered the Defendants' Inducement Misrepresentations to Kabins.

482. Mr. Bergman, Mr. Chain, and Mr. Gutzman were agents for the Millennium Entities, the Managers, the Millennium Investment Companies, and the Chain Consortium when making the Inducement Misrepresentations to Kabins at Dr. Kabins' Place of Business to induce Kabins to purchase securities from each of the Millennium Investment Companies.

483. The Chain Consortium, the Managers, and the Millennium Entities knew that the Inducement Misrepresentations were false or misleading, and the Chain Consortium, the Managers, and the Millennium Entities had no reasonable basis for believing that the Inducement Misrepresentations were not false or misleading.

484. The Chain Consortium, the Managers, and the Millennium Entities intended for Kabins to rely on the Inducement Misrepresentations so that Kabins would invest Kabins' respective money with each of the Millennium Investment Companies.

485. Kabins was justified in relying on the Inducement Misrepresentations because of the Managers' role as Managers of the Millennium Investment Companies and the purported expertise of Mr. Chain, the other Managers, and the Chain Consortium.



1       486. For each of Kabins' respective investments in the Millennium Investment Companies,  
2 Kabins' reliance on the Inducement Misrepresentations was the immediate cause of Kabins'  
3 decision to purchase the securities associated with the Millennium Investment Companies.

4       487. Kabins sustained actual damages as a direct and proximate result of the Managers'  
5 fraudulent misrepresentations, and the Managers are liable to Kabins for the amount of those  
6 actual damages, which includes Kabins' net invested amounts.

7       488. Because of the Defendants' fraudulent misrepresentations to Kabins, Defendants hold in  
8 constructive trust for Kabins, at a minimum, all of Kabins' respective invested capital and  
9 additional damages, in an amount to be determined at trial.

10       489. The Defendants could reasonably foresee that the complexities of the fraudulent  
11 misrepresentations created by the Defendants would require Kabins to hire and retain attorneys,  
12 incurring substantial attorneys' fees and costs, and Defendants are thus liable for Kabins'  
13 attorneys' fees and costs incurred herein as a result of same.

14       490. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
15 Plaintiffs are accordingly entitled to an award of punitive damages for Defendants' intentional  
16 misconduct.

17  
18                               **SEVENTH CAUSE OF ACTION**

19                               **FRAUD IN THE INDUCEMENT**

20                               **(Against All Defendants)**

21       491. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.  
22

1       492. On the Fraud in the Inducement dates, on behalf of the Managers and the Millennium  
2 Entities, Mr. Bergman, Mr. Chain, and Mr. Gutzman made the Inducement Misrepresentations to  
3 Kabins at Dr. Kabins' Place of Business to induce Kabins to execute agreements concerning  
4 Kabins' purchase of securities from each of the Millennium Investment Companies.

5       493. The Managers and Mr. Bergman knew that the Inducement Misrepresentations were  
6 false or misleading.

7       494. Kabins was justified in relying on the Inducement Misrepresentations when Kabins  
8 entered into the agreements for each of the Millennium Investment Companies.

9       495. At the times when Mr. Bergman, Mr. Chain and Mr. Gutzman delivered the Inducement  
10 Misrepresentations, Mr. Bergman, Mr. Chain and Mr. Gutzman were acting as agents for the  
11 Managers, the Millennium Entities, the Chain Consortium, and the Millennium Investment  
12 Companies.

13       496. For each of Kabins' seven (7) investments, Kabins' reliance on the Inducement  
14 Misrepresentations was the immediate cause of Kabins' decision to purchase the securities  
15 associated with 99th LLC, Benessere, Capri I, Cipriani, Cottonwood, Gila Bend, and Michael's.

16       497. Kabins has sustained actual damages as a direct and proximate result of the fraudulent  
17 Inducement Misrepresentations, and Defendants are liable to Kabins for the amount of those  
18 actual damages.

19       498. Because of Defendants' numerous acts of fraud in the inducement, Defendants hold in  
20 constructive trust for Kabins, at a minimum, all of Kabins' respective invested capital and  
21 additional damages, in an amount to be determined at trial.  
22

1       499. The Defendants could reasonably foresee that the complexities of their fraudulent  
2 scheme would require Kabins to hire and retain attorneys, incurring substantial attorneys' fees  
3 and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as  
4 a result of same.

5       500. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
6 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
7 intentional misconduct.

8  
9                                   **EIGHTH CAUSE OF ACTION**

10                           **FRAUD IN THE EXECUTION OR INCEPTION**

11                                   **(Against All Defendants)**

12       501. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

13       502. Mr. Bergman and Mr. Chain, acting as agents for the Chain Consortium, the Michael's  
14 Conspirators, the Managers, the Millennium Investment Companies, and the Millennium  
15 Entities, told Kabins that the documents Kabins was signing consisted of standard language  
16 expressing or embodying the Inducement Misrepresentations.

17       503. The Defendants intended for Kabins to rely on the Inducement Misrepresentations  
18 instead of the onerous, contradictory, misleading, and fraudulent provisions of the individual  
19 Operating Agreements.

20       504. Kabins did not know that the documents Kabins signed, well after Kabins had already  
21 invested based on the Inducement Misrepresentations, contained onerous and fraudulent terms,  
22

1 and Kabins did not know that the documents did not include, and were inconsistent with, the  
2 Inducement Misrepresentations.

3 505. For each of the contracts associated with each of the Millennium Investment  
4 Companies, Defendants did not deliver the contracts until well after Kabins had relied on the  
5 Inducement Misrepresentations and had already made Kabins' investment in each of the  
6 Millennium Investment Companies.

7 506. Based on the Millennium Investment Companies' check registers, the Defendants  
8 received and disbursed Kabins' invested capital *before* Kabins had ever signed the Operating  
9 Agreements evidencing Kabins' respective investments.

10 507. Kabins could only have relied on the Defendants' Inducement Misrepresentations as  
11 being embodied in the subsequently-delivered corresponding contracts for each of the  
12 Millennium Investment Companies because, by the time the Defendants delivered contracts for  
13 Kabins' signature, the Defendants had already spent a substantial portion, if not all, of Kabins'  
14 invested capital with respect to each of the Millennium Investment Companies.

15 508. Because of Defendants' numerous acts of fraud in the execution or inception,  
16 Defendants hold in constructive trust for Kabins, at a minimum, all of Kabins' respective  
17 invested capital and additional damages, in an amount to be determined at trial.

18 509. The Defendants could reasonably foresee that the complexities of Defendants'  
19 fraudulent scheme would require Kabins to hire and retain attorneys, incurring substantial  
20 attorneys' fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs  
21 incurred herein as a result of same.  
22

1        510. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
2 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
3 intentional misconduct.

4  
5                                **NINTH CAUSE OF ACTION**  
6                                **FRAUDULENT CONCEALMENT**  
7                                **(Against All Defendants)**

8        511. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

9        512. Defendants concealed or suppressed from Kabins material facts associated with the  
10 Collective Misrepresentations and with Defendants' other wrongful acts, including but not  
11 limited to those described herein (the "Concealed Facts").

12        513. Defendants were under a duty to disclose the Concealed Facts to Kabins based on  
13 Defendants' fiduciary relationship, at a minimum, with Kabins.

14        514. Defendants intentionally concealed or suppressed the Concealed Facts with the intent to  
15 defraud Kabins and for the purpose of inducing Kabins to invest approximately \$11 million in  
16 the Millennium Investment Companies.

17        515. Kabins was unaware of the Concealed Facts and Kabins would not have invested in any  
18 of the Millennium Investment Companies if Kabins had been apprised of the Concealed Facts.

19        516. As a result of Defendants' concealment or suppression of the Concealed Facts, Kabins  
20 sustained damages in an amount to be determined at trial.

1        517. Because of Defendants' fraudulent concealment of the Concealed Facts, Defendants  
2 hold in constructive trust for Kabins, at a minimum, all of Kabins' respective invested capital  
3 and additional damages, in an amount to be determined at trial.

4        518. The Defendants could reasonably foresee that the complexities of Defendants'  
5 fraudulent concealment would require Kabins to hire and retain attorneys, incurring substantial  
6 attorneys' fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs  
7 incurred herein as a result of same.

8        519. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
9 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
10 intentional misconduct.

11  
12                    **TENTH CAUSE OF ACTION**

13                    **CONVERSION**

14                    **(Against All Defendants)**

15        520. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

16        521. Defendants committed multiple distinct unlawful acts of dominion wrongfully exerted  
17 over Kabins' rights to Kabins' respective capital investments in the Millennium Investment  
18 Companies.

19        522. The Defendants' unlawful acts were in denial of, or inconsistent with, Kabins' title or  
20 rights to Kabins' respective capital investments in the Millennium Investment Companies, and  
21 were in derogation, exclusion, or defiance of Kabins' title or rights in Kabins' respective capital  
22 investments in the Millennium Investment Companies.

1 523. Defendants' unlawful acts are not excusable by care, good faith, lack of knowledge, or  
2 any other basis at law.

3 524. Because of Defendants' unlawful acts of conversion, Defendants hold in constructive  
4 trust for Kabins, at a minimum, all of Kabins' respective invested capital and additional  
5 damages, in an amount to be determined at trial.

6 525. The Defendants could reasonably foresee that the complexities of their unlawful acts of  
7 conversion would require Kabins to hire and retain attorneys, incurring substantial attorneys'  
8 fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs incurred  
9 herein as a result of same.

10 526. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
11 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
12 intentional misconduct.

13  
14 **ELEVENTH CAUSE OF ACTION**

15 **SECURITIES FRAUD UNDER NEVADA REVISED STATUTES 90.660**

16 **(Against All Defendants)**

17 527. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

18 528. Defendants are subject to civil liability for Defendants' violations of the Nevada  
19 securities laws, pursuant to NRS 90.660.

20 529. Each of the Chain Consortium, the Michael's Conspirators, the Millennium Entities, the  
21 Managers, and the Millennium Investment Companies, directly or indirectly, offered and sold  
22

1 securities to Kabins, respectively, in violation of NRS 90.660, 90.310, 90.460, 90.500, and  
2 90.570.

3 530. In violation of NRS 90.310(1), none of the Chain Consortium, the Michael's  
4 Conspirators, the Millennium Entities, the Managers, or the Millennium Investment Companies  
5 were licensed to sell securities, or were entitled to an exemption from such licensure, when  
6 offering and selling securities to Kabins.

7 531. In violation of NRS 90.460, the Chain Consortium, the Michael's Conspirators, the  
8 Millennium Entities, the Managers, and the Millennium Investment Companies failed to register  
9 the securities that the Chain Consortium, the Michael's Conspirators, the Millennium Entities,  
10 the Managers, and the Millennium Investment Companies sold to Kabins.

11 532. In violation of NRS 90.500, the Chain Consortium, the Michael's Conspirators, the  
12 Millennium Entities, the Managers, and the Millennium Investment Companies failed to deliver  
13 a prospectus to Kabins with respect to the securities that the Chain Consortium, the Michael's  
14 Conspirators, the Millennium Entities, the Managers, and the Millennium Investment Companies  
15 sold to Kabins.

16 533. In violation of NRS 90.570, the Chain Consortium, the Michael's Conspirators, the  
17 Millennium Entities, the Managers, and the Millennium Investment Companies, both directly  
18 and indirectly, made untrue statements of material facts and omitted to state material facts  
19 necessary in order to make the Chain Consortium's, the Michael's Conspirators', the Millennium  
20 Entities', the Managers', and the Millennium Investment Companies' statements made not  
21 misleading in the light of the circumstances under which those statements were made, as alleged  
22 herein.



1 534. Each of the Defendants willfully participated in the above-pled violations of Nevada  
2 securities laws against Kabins.

3 535. Each of the Chain Consortium controlled and materially aided the Managers and the  
4 Millennium Entities, the Millennium Investment Companies in committing the securities fraud  
5 violations. Additionally, each of the Managers and the Millennium Entities controlled and  
6 materially aided the Millennium Investment Companies in committing the securities fraud  
7 violations.

8 536. Because of Defendants' violations of Nevada securities laws, Defendants hold in  
9 constructive trust for Kabins, at a minimum, all of Kabins' respective invested capital and  
10 additional damages, in an amount to be determined at trial.

11 537. The Defendants could reasonably foresee that the complexities of their violations of  
12 Nevada securities laws would require Kabins to hire and retain attorneys, incurring substantial  
13 attorneys' fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs  
14 incurred herein as a result of same.

15 538. The Defendants acted with malice, oppression, and intent to defraud Kabins, and  
16 Plaintiffs are accordingly entitled to an award of punitive damages for the Defendants'  
17 intentional misconduct.

18  
19 **TWELFTH CAUSE OF ACTION**

20 **NEGLIGENT MISREPRESENTATION**

21 **(Against All Defendants)**

22 539. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

1       540. Defendants made the Collective Misrepresentations at least seven (7) different times, as  
2 alleged herein, in the course of Defendants' special relationship with Kabins based on  
3 Defendants' fiduciary duties.

4       541. Defendants made the Collective Misrepresentations in the course of Defendants'  
5 business and in connection with businesses in which the Defendants had pecuniary interests.

6       542. Defendants made the Collective Misrepresentations for the guidance of Kabins in  
7 Kabins' investment transactions.

8       543. Kabins justifiably relied upon the Collective Misrepresentations.

9       544. Kabins' reliance on the Collective Misrepresentations resulted in pecuniary loss to  
10 Kabins.

11       545. The Defendants failed to exercise reasonable care or competence in obtaining or  
12 communicating to Kabins the information comprising the Collective Misrepresentations.

13       546. Because of Defendants' negligent misrepresentations, Defendants hold in constructive  
14 trust for Kabins, at a minimum, all of Kabins' respective invested capital and additional  
15 damages, in an amount to be determined at trial.

16       547. The Defendants could reasonably foresee that the complexities of their negligent  
17 misrepresentations would require Kabins to hire and retain attorneys, incurring substantial  
18 attorneys' fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs  
19 incurred herein as a result of same.

**THIRTEENTH CAUSE OF ACTION**

**NEGLIGENT PERFORMANCE OF AN UNDERTAKING**

**(Against All Defendants)**

548. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

549. The Chain Consortium, the Managers, the Millennium Investment Companies, and the Millennium Entities employed in-house counsel, accountants, and Defendants' own individual experience and alleged skill in undertaking to aid the Chain Consortium, the Managers, and the Millennium Entities in creating the Millennium Investment Companies' Operating Agreements, disclosure documents, financial statements, and other investment services purportedly serving to add value to Kabins' respective investments in the Millennium Investment Companies, which the Chain Consortium, the Managers, and Millennium Entities should have recognized as necessary for the protection of Kabins' respective investments.

550. The Defendants undertook to perform duties owed by the Managers and the Millennium Investment Companies to Kabins, and failed to exercise reasonable care with respect to such undertaking, and Kabins suffered damages as a result of Defendants' failure to exercise such reasonable care in Defendants' undertaking.

551. Additional parties, who are not yet known to Kabins, also engaged in negligent undertakings and Kabins will seek to amend Kabins' Complaint to include those additional parties as that information becomes available to Kabins.

552. Because of the Defendants' negligent undertaking, Defendants hold in constructive trust for Kabins, at a minimum, all of Kabins' respective invested capital and additional damages, in an amount to be determined at trial.

1        553. The Defendants could reasonably foresee that the complexities of Defendants' negligent  
 2 undertaking would require Kabins to hire and retain attorneys, incurring substantial attorneys'  
 3 fees and costs, and Defendants are thus liable for Kabins' attorneys' fees and costs incurred  
 4 herein as a result of same.

5  
 6                                    **FOURTEENTH CAUSE OF ACTION**

7                                    **BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

8                                    **(Against 99th Management, the Chain Consortium, and the Millennium Entities)**

9        554. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

10       555. The Manager of 99th LLC, 99th Management, is a member of 99th LLC with Kabins,  
 11 and 99th Management owes a fiduciary duty of loyalty to Kabins arising out of that co-member  
 12 relationship, the member-manager relationship, and the 99th LLC operating agreement.  
 13 Additionally, the Millennium Entities and the Chain Consortium held themselves out as  
 14 possessing managerial influence, power, and control to direct the business activities of 99th LLC.  
 15 (Defendants 99th Management, the Chain Consortium, and the Millennium Entities are  
 16 collectively referred to as the "99th Defendants").

17       556. The Chain Consortium, as *de facto* officers and directors of 99th LLC, are personally  
 18 liable for breaching their fiduciary duty of loyalty based on those individuals' intentional  
 19 misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without  
 20 limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit  
 21 securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil  
 22 conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in

1 the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l)  
2 Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n)  
3 negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)  
4 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
5 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
6 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
7 estoppel.

8 557. The 99th Defendants further breached the 99th Defendants' fiduciary duty of loyalty to  
9 Kabins by engaging in multiple acts of self-dealing, misappropriation of 99th LLC's funds, and  
10 directing the affairs of 99th LLC for the 99th Defendants' own self-interests and to the detriment  
11 of Kabins.

12 558. Kabins has sustained actual damages as a direct and proximate result of the 99th  
13 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the 99th  
14 Defendants are liable to Kabins for the amount of those actual damages.

15 559. The 99th Defendants have profited as a direct and proximate result of the 99th  
16 Defendants' breaches of the 99th Defendants' fiduciary duty of loyalty to Kabins, and the 99th  
17 Defendants are liable to Kabins for the amount of those profits.

18 560. Because of the 99th Defendants' breach of the 99th Defendants' fiduciary duty of  
19 loyalty to Kabins resulting in the 99th Defendants' illegitimate profits, the 99th Defendants hold  
20 the 99th Defendants' illegitimate profits in constructive trust for Kabins.

1        561. The 99th Defendants could foresee the requirement for attorneys' fees in prosecuting  
2 the 99th Defendants' breach of the fiduciary duty of loyalty, and the 99th Defendants are thus  
3 liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

4        562. The 99th Defendants acted with malice, oppression, and intent to defraud Kabins, and  
5 Plaintiffs are accordingly entitled to an award of punitive damages for the 99th Defendants'  
6 intentional misconduct.

7  
8                                    **FIFTEENTH CAUSE OF ACTION**

9                                    **BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

10                                    **(Against Benessere Management, the Chain Consortium,**  
11                                    **and the Millennium Entities)**

12        563. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

13        564. The Manager of Benessere, Benessere Management, is a member of Benessere with  
14 Kabins; and Benessere Management owes a fiduciary duty of loyalty to Kabins arising out of  
15 that co-member relationship, the member-manager relationship, and the Benessere operating  
16 agreement. Additionally, the Millennium Entities and the Chain Consortium held themselves out  
17 as possessing managerial influence, power, and control to direct the business activities of  
18 Benessere. (Defendants Benessere Management, the Chain Consortium, and the Millennium  
19 Entities are collectively referred to as the "Benessere Defendants").

20        565. The Chain Consortium, as *de facto* officers and directors of Benessere, are personally  
21 liable for breaching their fiduciary duty of loyalty based on those individuals' intentional  
22 misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without

1 limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit  
2 securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil  
3 conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in  
4 the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l)  
5 Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n)  
6 negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)  
7 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
8 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
9 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
10 estoppel.

11 566. The Benessere Defendants further breached the Benessere Defendants' fiduciary duty of  
12 loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of Benessere's  
13 funds, and directing the affairs of Benessere for the Benessere Defendants' own self-interests and  
14 to the detriment of Kabins.

15 567. Kabins has sustained actual damages as a direct and proximate result of the Benessere  
16 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the Benessere  
17 Defendants are liable to Kabins for the amount of those actual damages.

18 568. The Benessere Defendants have profited as a direct and proximate result of the  
19 Benessere Defendants' breaches of the Benessere Defendants' fiduciary duty of loyalty to  
20 Kabins, and the Benessere Defendants are liable to Kabins for the amount of those profits.

21 569. Because of the Benessere Defendants' breach of the Benessere Defendants' fiduciary  
22 duty of loyalty to Kabins resulting in the Benessere Defendants' illegitimate profits, the

1 Benessere Defendants hold the Benessere Defendants' illegitimate profits in constructive trust  
2 for Kabins.

3 570. The Benessere Defendants could foresee the requirement for attorneys' fees in  
4 prosecuting the Benessere Defendants' breach of the fiduciary duty of loyalty, and the Benessere  
5 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
6 same.

7 571. The Benessere Defendants acted with malice, oppression, and intent to defraud Kabins,  
8 and Plaintiffs are accordingly entitled to an award of punitive damages for the Benessere  
9 Defendants' intentional misconduct.

10  
11 **SIXTEENTH CAUSE OF ACTION**

12 **BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

13 **(Against Phoenix 83rd, the Chain Consortium, and the Millennium Entities)**

14 572. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

15 573. The Manager of Capri I, Phoenix 83rd, is a member of Capri I with Kabins, and Phoenix  
16 83rd owes a fiduciary duty of loyalty to Kabins arising out of that co-member relationship, the  
17 member-manager relationship, and the Capri I operating agreement. Additionally, the  
18 Millennium Entities and the Chain Consortium held themselves out as possessing managerial  
19 influence, power, and control to direct the business activities of Capri I. (Defendants Phoenix  
20 83rd, the Chain Consortium, and the Millennium Entities are collectively referred to as the  
21 "Capri Defendants").  
22



1        574. The Chain Consortium, as *de facto* officers and directors of Capri I, are personally  
2 liable for breaching their fiduciary duty of loyalty based on those individuals' intentional  
3 misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without  
4 limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit  
5 securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil  
6 conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in  
7 the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l)  
8 Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n)  
9 negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)  
10 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
11 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
12 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
13 estoppel.

14        575. The Capri Defendants further breached the Capri Defendants' fiduciary duty of loyalty  
15 to Kabins by engaging in multiple acts of self-dealing, misappropriation of Capri I's funds, and  
16 directing the affairs of Capri I for the Capri Defendants' own self-interests and to the detriment  
17 of Kabins.

18        576. Kabins has sustained actual damages as a direct and proximate result of the Capri  
19 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the Capri  
20 Defendants are liable to Kabins for the amount of those actual damages.

1 577. The Capri Defendants have profited as a direct and proximate result of the Capri  
2 Defendants' breaches of the Capri Defendants' fiduciary duty of loyalty to Kabins, and the Capri  
3 Defendants are liable to Kabins for the amount of those profits.

4 578. Because of the Capri Defendants' breach of the Capri Defendants' fiduciary duty of  
5 loyalty to Kabins resulting in the Capri Defendants' illegitimate profits, the Capri Defendants  
6 hold the Capri Defendants' illegitimate profits in constructive trust for Kabins.

7 579. The Capri Defendants could foresee the requirement for attorneys' fees in prosecuting  
8 the Capri Defendants' breach of the fiduciary duty of loyalty, and the Capri Defendants are thus  
9 liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

10 580. The Capri Defendants acted with malice, oppression, and intent to defraud Kabins, and  
11 Plaintiffs are accordingly entitled to an award of punitive damages for the Capri Defendants'  
12 intentional misconduct.

13  
14 **SEVENTEENTH CAUSE OF ACTION**

15 **BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

16 **(Against Mr. Corbo, Mr. Gutzman, Cipriani Management, the Chain Consortium, and the**  
17 **Millennium Entities)**

18 581. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

19 582. The Managers of Cipriani, Mr. Corbo, Mr. Gutzman and Cipriani Management, are  
20 currently members or were at the relevant times herein, members of Cipriani with Kabins, and  
21 Corbo, Gutzman and Cipriani Management owe a fiduciary duty of loyalty to Kabins arising out  
22 of that co-member relationship, the member-manager relationship, and the Cipriani operating

1 agreement. Additionally, the Millennium Entities and the Chain Consortium held themselves out  
2 as possessing Managerial influence, power, and control to direct the business activities of  
3 Cipriani. (Defendants Mr. Corbo, Mr. Gutzman, Cipriani Management, the Chain Consortium,  
4 and the Millennium Entities are collectively referred to as the “Cipriani Defendants”).

5 583. The Chain Consortium, as *de facto* officers and directors of Cipriani, are personally  
6 liable for breaching their fiduciary duty of loyalty based on those individuals’ intentional  
7 misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without  
8 limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit  
9 securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil  
10 conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in  
11 the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l)  
12 Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n)  
13 negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)  
14 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
15 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
16 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
17 estoppel.

18 584. The Cipriani Defendants further breached the Cipriani Defendants’ fiduciary duty of  
19 loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of Cipriani’s  
20 funds, and directing the affairs of Cipriani for the Cipriani Defendants’ own self-interests and to  
21 the detriment of Kabins.  
22

1 585. Kabins has sustained actual damages as a direct and proximate result of the Cipriani  
2 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the Cipriani  
3 Defendants are liable to Kabins for the amount of those actual damages.

4 586. The Cipriani Defendants have profited as a direct and proximate result of the Cipriani  
5 Defendants' breaches of the Cipriani Defendants' fiduciary duty of loyalty to Kabins, and the  
6 Cipriani Defendants are liable to Kabins for the amount of those profits.

7 587. Because of the Cipriani Defendants' breach of the Cipriani Defendants' fiduciary duty  
8 of loyalty to Kabins resulting in the Cipriani Defendants' illegitimate profits, the Cipriani  
9 Defendants hold the Cipriani Defendants' illegitimate profits in constructive trust for Kabins.

10 588. The Cipriani Defendants could foresee the requirement for attorneys' fees in  
11 prosecuting the Cipriani Defendants' breach of the fiduciary duty of loyalty, and the Cipriani  
12 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
13 same.

14 589. The Cipriani Defendants acted with malice, oppression, and intent to defraud Kabins,  
15 and Plaintiffs are accordingly entitled to an award of punitive damages for the Cipriani  
16 Defendants' intentional misconduct.

17  
18 **EIGHTEENTH CAUSE OF ACTION**

19 **BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

20 **(Against Mr. Kammeyer, Mr. Povilaitis, the Chain Consortium,**  
21 **and the Millennium Entities)**

22 590. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

1       591. The Managers of Cottonwood, Mr. Kammeyer and Mr. Povilaitis, are currently  
2 members or were at the relevant times herein, members of Cottonwood with Kabins; and Mr.  
3 Kammeyer and Mr. Povilaitis owe or owed a fiduciary duty of loyalty to Kabins arising out of  
4 that co-member relationship, the member-manager relationship, and the Cottonwood operating  
5 agreement. Additionally, the Millennium Entities and the Chain Consortium held themselves out  
6 as possessing managerial influence, power, and control to direct the business activities of  
7 Cottonwood. (Defendants Mr. Kammeyer, Mr. Povilaitis, the Chain Consortium, and the  
8 Millennium Entities are collectively referred to as the "Cottonwood Defendants").

9       592. The Chain Consortium, as *de facto* officers and directors of Cottonwood, are personally  
10 liable for breaching their fiduciary duty of loyalty based on those individuals' intentional  
11 misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without  
12 limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit  
13 securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil  
14 conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in  
15 the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l)  
16 Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n)  
17 negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)  
18 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
19 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
20 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
21 estoppel.  
22

1       593. The Cottonwood Defendants further breached the Cottonwood Defendants' fiduciary  
2 duty of loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of  
3 Cottonwood's funds, and directing the affairs of Cottonwood for the Cottonwood Defendants'  
4 own self-interests and to the detriment of Kabins.

5       594. Kabins has sustained actual damages as a direct and proximate result of the Cottonwood  
6 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the Cottonwood  
7 Defendants are liable to Kabins for the amount of those actual damages.

8       595. The Cottonwood Defendants have profited as a direct and proximate result of the  
9 Cottonwood Defendants' breaches of the Cottonwood Defendants' fiduciary duty of loyalty to  
10 Kabins, and the Cottonwood Defendants are liable to Kabins for the amount of those profits.

11       596. Because of the Cottonwood Defendants' breach of the Cottonwood Defendants'  
12 fiduciary duty of loyalty to Kabins resulting in the Cottonwood Defendants' illegitimate profits,  
13 the Cottonwood Defendants hold the Cottonwood Defendants hold in constructive trust for  
14 Kabins.

15       597. The Cottonwood Defendants could foresee the requirement for attorneys' fees in  
16 prosecuting the Cottonwood Defendants' breach of the fiduciary duty of loyalty, and the  
17 Cottonwood Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
18 result of same.

19       598. The Cottonwood Defendants acted with malice, oppression, and intent to defraud  
20 Kabins, and Plaintiffs are accordingly entitled to an award of punitive damages for the  
21 Cottonwood Defendants' intentional misconduct.  
22

**NINETEENTH CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

**(Against GEIII, Innovative, the Chain Consortium,  
and the Millennium Entities)**

599. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

600. The Managers of Gila Bend, GEIII and Innovative, are currently members or were at the relevant times herein, members of Gila Bend with Kabins, and GEIII and Innovative owe or owed a fiduciary duty of loyalty to Kabins arising out of that co-member relationship, the member-manager relationship, and the Gila Bend operating agreement. Additionally, the Millennium Entities and the Chain Consortium held themselves out as possessing managerial influence, power, and control to direct the business activities of Gila Bend. (Defendants GEIII, Innovative, the Chain Consortium, and the Millennium Entities are collectively referred to as the “Gila Bend Defendants”).

601. The Chain Consortium, as *de facto* officers and directors of Gila Bend, are personally liable for breaching their fiduciary duty of loyalty based on those individuals’ intentional misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)

1 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
2 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
3 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
4 estoppel.

5 602. The Gila Bend Defendants further breached the Gila Bend Defendants' fiduciary duty of  
6 loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of Gila Bend's  
7 funds, and directing the affairs of Gila Bend for the Gila Bend Defendants' own self-interests  
8 and to the detriment of Kabins.

9 603. Kabins has sustained actual damages as a direct and proximate result of the Gila Bend  
10 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the Gila Bend  
11 Defendants are liable to Kabins for the amount of those actual damages.

12 604. The Gila Bend Defendants have profited as a direct and proximate result of the Gila  
13 Bend Defendants' breaches of the Gila Bend Defendants' fiduciary duty of loyalty to Kabins,  
14 and the Gila Bend Defendants are liable to Kabins for the amount of those profits.

15 605. Because of the Gila Bend Defendants' breach of the Gila Bend Defendants' fiduciary  
16 duty of loyalty to Kabins resulting in the Gila Bend Defendants' illegitimate profits, the Gila  
17 Bend Defendants hold the Gila Bend Defendants' illegitimate profits in constructive trust for  
18 Kabins.

19 606. The Gila Bend Defendants could foresee the requirement for attorneys' fees in  
20 prosecuting the Gila Bend Defendants' breach of the fiduciary duty of loyalty, and the Gila Bend  
21 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
22 same.



1       607. The Gila Bend Defendants acted with malice, oppression, and intent to defraud Kabins,  
 2 and Plaintiffs are accordingly entitled to an award of punitive damages for the Gila Bend  
 3 Defendants' intentional misconduct.

4  
 5                               **TWENTIETH CAUSE OF ACTION**

6                               **BREACH OF FIDUCIARY DUTIES: DUTY OF LOYALTY**

7       **(Against Modern Management, Mr. Chain, Mr. Gutzman, the Chain Consortium, and the**  
 8                               **Millennium Entities)**

9       608. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

10       609. The Managers of Michael's, Modern Management, Mr. Chain and Mr. Gutzman, are  
 11 currently members, or were at the relevant times herein members of Michael's with Kabins; and  
 12 Modern Management, Mr. Chain and Mr. Gutzman owe or owed a fiduciary duty of loyalty to  
 13 Kabins arising out of that co-member relationship, the member-manager relationship, and the  
 14 Michael's operating agreement. Additionally, the Millennium Entities and the Chain  
 15 Consortium held themselves out as possessing managerial influence, power, and control to direct  
 16 the business activities of Michael's. (Defendants Modern Management, Mr. Chain, Mr.  
 17 Gutzman, the Chain Consortium, and the Millennium Entities are collectively referred to as the  
 18 "Michael's Defendants").

19       610. The Chain Consortium, as *de facto* officers and directors of Michael's, are personally  
 20 liable for breaching their fiduciary duty of loyalty based on those individuals' intentional  
 21 misconduct, fraud, and knowing violations of the law in committing, as alleged herein, without  
 22 limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit

1 securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil  
2 conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in  
3 the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l)  
4 Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n)  
5 negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q)  
6 breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the  
7 Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to  
8 violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory  
9 estoppel.

10 611. The Michael's Defendants further breached the Michael's Defendants' fiduciary duty of  
11 loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of Michael's  
12 funds, and directing the affairs of Michael's for the Michael's Defendants' own self-interests and  
13 to the detriment of Kabins.

14 612. Kabins has sustained actual damages as a direct and proximate result of the Michael's  
15 Defendants' multiple breaches of the fiduciary duty of loyalty to Kabins, and the Michael's  
16 Defendants are liable to Kabins for the amount of those actual damages.

17 613. The Michael's Defendants have profited as a direct and proximate result of the  
18 Michael's Defendants' breaches of the Michael's Defendants' fiduciary duty of loyalty to  
19 Kabins, and the Michael's Defendants are liable to Kabins for the amount of those profits.

20 614. Because of the Michael's Defendants' breach of the Michael's Defendants' fiduciary  
21 duty of loyalty to Kabins resulting in the Michael's Defendants' illegitimate profits the  
22

1 Michael's Defendants hold the Michael's Defendants' illegitimate profits in constructive trust for  
2 Kabins.

3 615. The Michael's Defendants could foresee the requirement for attorneys' fees in  
4 prosecuting the Michael's Defendants' breach of the fiduciary duty of loyalty, and the Michael's  
5 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
6 same.

7 616. The Michael's Defendants acted with malice, oppression, and intent to defraud Kabins,  
8 and Plaintiffs are accordingly entitled to an award of punitive damages for the Michael's  
9 Defendants' intentional misconduct.

10  
11 **TWENTY-FIRST CAUSE OF ACTION**

12 **BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

13 **(Against the 99th Defendants)**

14 617. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

15 618. The 99th Defendants wasted Kabins' capital investment in 99th LLC by making  
16 numerous uninformed decisions, routinely ignoring obvious risks in a manner constituting gross  
17 negligence, and acting contrary to the best interests of 99th LLC in bad faith, while wasting 99th  
18 LLC's assets.

19 619. The Chain Consortium, as *de facto* officers and directors of 99th LLC, are personally  
20 liable for breaching their fiduciary duty of care based on those individuals' intentional and  
21 unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in  
22 committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R.

1 §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities  
2 fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting,  
3 (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j)  
4 fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false  
5 pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an  
6 undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair  
7 dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C.  
8 §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust  
9 enrichment, and (w) promissory estoppel.

10 620. The 99th Defendants further breached the 99th Defendants' fiduciary duty of loyalty to  
11 Kabins by engaging in multiple acts of self-dealing, misappropriation of 99th LLC's funds, and  
12 directing the affairs of 99th LLC for the 99th Defendants' own self-interests and to the detriment  
13 of Kabins.

14 621. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
15 the 99th Defendants of the 99th Defendants' fiduciary duty of care to Kabins, and the 99th  
16 Defendants are liable to Kabins for the amount of those actual damages.

17 622. The 99th Defendants have profited as a direct and proximate result of the 99th  
18 Defendants' breaches of the 99th Defendants' fiduciary duty of care to Kabins, and the 99th  
19 Defendants are liable to Kabins for the amount of those profits.

20 623. Because of the 99th Defendants' breach of the 99th Defendants' fiduciary duty of care  
21 to Kabins resulting in the 99th Defendants' illegitimate profits, the 99th Defendants hold the  
22 99th Defendants' illegitimate profits in constructive trust for Kabins.

1        624. The 99th Defendants could foresee the requirement for attorneys' fees in prosecuting  
 2 the 99th Defendants' breaches of the duty of care, and the 99th Defendants are thus liable for  
 3 Kabins' attorneys' fees and costs incurred herein as a result of same.

4        625. The 99th Defendants acted with malice, oppression, and intent to defraud Kabins, and  
 5 Plaintiffs are accordingly entitled to an award of punitive damages for the 99th Defendants'  
 6 intentional misconduct.

7  
 8                                    **TWENTY-SECOND CAUSE OF ACTION**

9                                    **BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

10                                    **(Against the Benessere Defendants)**

11        626. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

12        627. The Benessere Defendants wasted Kabins' capital investment in Benessere by making  
 13 numerous uninformed decisions, routinely ignoring obvious risks in a manner constituting gross  
 14 negligence, and acting contrary to the best interests of the company in bad faith, while wasting  
 15 Benessere's assets.

16        628. The Chain Consortium, as *de facto* officers and directors of Benessere, are personally  
 17 liable for breaching their fiduciary duty of care based on those individuals' intentional and  
 18 unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in  
 19 committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R.  
 20 §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities  
 21 fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting,  
 22 (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j)

1 fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false  
2 pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an  
3 undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair  
4 dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C.  
5 §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust  
6 enrichment, and (w) promissory estoppel.

7 629. The Benessere Defendants further breached the Benessere Defendants' fiduciary duty of  
8 loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of Benessere's  
9 funds, and directing the affairs of Benessere for the Benessere Defendants' own self-interests and  
10 to the detriment of Kabins.

11 630. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
12 the Benessere Defendants of the Benessere Defendants' fiduciary duty of care to Kabins, and the  
13 Benessere Defendants are liable to Kabins for the amount of those actual damages.

14 631. The Benessere Defendants have profited as a direct and proximate result of the  
15 Benessere Defendants' breaches of the Benessere Defendants' fiduciary duty of care to Kabins,  
16 and the Benessere Defendants are liable to Kabins for the amount of those profits.

17 632. Because of the Benessere Defendants' breach of the Benessere Defendants' fiduciary  
18 duty of care to Kabins resulting in the Benessere Defendants' illegitimate profits, the Benessere  
19 Defendants hold the Benessere Defendants' illegitimate profits in constructive trust for Kabins.

20 633. The Benessere Defendants could foresee the requirement for attorneys' fees in  
21 prosecuting the Benessere Defendants' breaches of the duty of care, and the Benessere  
22

1 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
2 same.

3 634. The Benessere Defendants acted with malice, oppression, and intent to defraud Kabins,  
4 and Plaintiffs are accordingly entitled to an award of punitive damages for the Benessere  
5 Defendants' intentional misconduct.

6  
7 **TWENTY-THIRD CAUSE OF ACTION**

8 **BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

9 **(Against the Capri Defendants)**

10 635. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

11 636. The Capri Defendants wasted Kabins' capital investment in Capri by making numerous  
12 uninformed decisions, routinely ignoring obvious risks in a manner constituting gross  
13 negligence, and acting contrary to the best interests of the company in bad faith, while wasting  
14 Capri's assets.

15 637. The Chain Consortium, as *de facto* officers and directors of Capri I, are personally liable  
16 for breaching their fiduciary duty of care based on those individuals' intentional and  
17 unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in  
18 committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R.  
19 §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities  
20 fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting,  
21 (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j)  
22 fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false

1 pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an  
2 undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair  
3 dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C.  
4 §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust  
5 enrichment, and (w) promissory estoppel.

6 638. The Capri Defendants further breached the fiduciary duty of loyalty to Kabins by  
7 engaging in multiple acts of self-dealing, misappropriation of Capri I's funds, and directing the  
8 affairs of Capri I for the Capri Defendants' own self-interests and to the detriment of Kabins.

9 639. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
10 the Capri Defendants of the Capri Defendants' fiduciary duty of care to Kabins, and the Capri  
11 Defendants are liable to Kabins for the amount of those actual damages.

12 640. The Capri Defendants have profited as a direct and proximate result of the Capri  
13 Defendants' breaches of the Capri Defendants' fiduciary duty of care to Kabins, and the Capri  
14 Defendants are liable to Kabins for the amount of those profits.

15 641. Because of the Capri Defendants' breach of the Capri Defendants' fiduciary duty of care  
16 to Kabins resulting in the Capri Defendants' illegitimate profits, the Capri Defendants hold the  
17 Capri Defendants' illegitimate profits in constructive trust for Kabins.

18 642. The Capri Defendants could foresee the requirement for attorneys' fees in prosecuting  
19 the Capri Defendants' breaches of the duty of care, and the Capri Defendants are thus liable for  
20 Kabins' attorneys' fees and costs incurred herein as a result of same.



1        643. The Capri Defendants acted with malice, oppression, and intent to defraud Kabins, and  
2 Plaintiffs are accordingly entitled to an award of punitive damages for the Capri Defendants'  
3 intentional misconduct.

4  
5                    **TWENTY-FOURTH CAUSE OF ACTION**

6                    **BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

7                    **(Against the Cipriani Defendants)**

8        644. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

9        645. The Cipriani Defendants wasted Kabins' capital investment in Cipriani by making  
10 numerous uninformed decisions, routinely ignoring obvious risks in a manner constituting gross  
11 negligence, and acting contrary to the best interests of the company in bad faith, while wasting  
12 Cipriani's assets.

13        646. The Chain Consortium, as *de facto* officers and directors of Cipriani, are personally  
14 liable for breaching their fiduciary duty of care based on those individuals' intentional and  
15 unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in  
16 committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R.  
17 §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities  
18 fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting,  
19 (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j)  
20 fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false  
21 pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an  
22 undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair

1 dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C.  
2 §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust  
3 enrichment, and (w) promissory estoppel.

4 647. The Cipriani Defendants further breached the fiduciary duty of loyalty to Kabins by  
5 engaging in multiple acts of self-dealing, misappropriation of Cipriani's funds, and directing the  
6 affairs of Cipriani for the Cipriani Defendants' own self-interests and to the detriment of Kabins.

7 648. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
8 the Cipriani Defendants of the Cipriani Defendants' fiduciary duty of care to Kabins, and the  
9 Cipriani Defendants are liable to Kabins for the amount of those actual damages.

10 649. The Cipriani Defendants have profited as a direct and proximate result of the Cipriani  
11 Defendants' breaches of the Cipriani Defendants' fiduciary duty of care to Kabins, and the  
12 Cipriani Defendants are liable to Kabins for the amount of those profits.

13 650. Because of the Cipriani Defendants' breach of the Cipriani Defendants' fiduciary duty  
14 of care to Kabins resulting in the Cipriani Defendants' illegitimate profits, the Cipriani  
15 Defendants hold the Cipriani Defendants' illegitimate profits in constructive trust for Kabins

16 651. The Cipriani Defendants could foresee the requirement for attorneys' fees in  
17 prosecuting the Cipriani Defendants' breaches of the duty of care, and the Cipriani Defendants  
18 are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

19 652. The Cipriani Defendants acted with malice, oppression, and intent to defraud Kabins,  
20 and Plaintiffs are accordingly entitled to an award of punitive damages for the Cipriani  
21 Defendants' intentional misconduct.  
22

**TWENTY-FIFTH CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

**(Against the Cottonwood Defendants)**

653. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

654. The Cottonwood Defendants wasted Kabins' capital investment in Cottonwood by making numerous uninformed decisions, routinely ignoring obvious risks in a manner constituting gross negligence, and acting contrary to the best interests of the company in bad faith, while wasting Cottonwood's assets.

655. The Chain Consortium, as *de facto* officers and directors of Cottonwood, are personally liable for breaching their fiduciary duty of care based on those individuals' intentional and unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory estoppel.

1        656. The Cottonwood Defendants further breached the Cottonwood Defendants' fiduciary  
2 duty of loyalty to Kabins by engaging in multiple acts of self-dealing, misappropriation of  
3 Cottonwood's funds, and directing the affairs of Cottonwood for the Cottonwood Defendants'  
4 own self-interests and to the detriment of Kabins.

5        657. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
6 the Cottonwood Defendants of the Cottonwood Defendants' fiduciary duty of care to Kabins,  
7 and the Cottonwood Defendants are liable to Kabins for the amount of those actual damages.

8        658. The Cottonwood Defendants have profited as a direct and proximate result of the  
9 Cottonwood Defendants' breaches of the Cottonwood Defendants' fiduciary duty of care to  
10 Kabins, and the Cottonwood Defendants are liable to Kabins for the amount of those profits.

11        659. Because of the Cottonwood Defendants' breach of the Cottonwood Defendants'  
12 fiduciary duty of care to Kabins resulting in the Cottonwood Defendants' illegitimate profits, the  
13 Cottonwood Defendants hold the Cottonwood Defendants' illegitimate profits in constructive  
14 trust for Kabins.

15        660. The Cottonwood Defendants could foresee the requirement for attorneys' fees in  
16 prosecuting the Cottonwood Defendants' breaches of the duty of care, and the Cottonwood  
17 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
18 same.

19        661. The Cottonwood Defendants acted with malice, oppression, and intent to defraud  
20 Kabins, and Plaintiffs are accordingly entitled to an award of punitive damages for the  
21 Cottonwood Defendants' intentional misconduct.  
22

**TWENTY-SIXTH CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

**(Against the Gila Bend Defendants)**

662. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

663. The Gila Bend Defendants wasted Kabins' capital investment in Gila Bend by making numerous uninformed decisions, routinely ignoring obvious risks in a manner constituting gross negligence, and acting contrary to the best interests of the company in bad faith, while wasting Gila Bend's assets.

664. The Chain Consortium, as *de facto* officers and directors of Gila Bend, are personally liable for breaching their fiduciary duty of care based on those individuals' intentional and unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory estoppel.

1        665. The Gila Bend Defendants further breached the fiduciary duty of loyalty to Kabins by  
2 engaging in multiple acts of self-dealing, misappropriation of Gila Bend's funds, and directing  
3 the affairs of Gila Bend for the Gila Bend Defendants' own self-interests and to the detriment of  
4 Kabins.

5        666. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
6 the Gila Bend Defendants of the Gila Bend Defendants' fiduciary duty of care to Kabins, and  
7 the Gila Bend Defendants are liable to Kabins for the amount of those actual damages.

8        667. The Gila Bend Defendants have profited as a direct and proximate result of the Gila  
9 Bend Defendants' breaches of the Gila Bend Defendants' fiduciary duty of care to Kabins, and  
10 the Gila Bend Defendants are liable to Kabins for the amount of those profits.

11        668. Because of the Gila Bend Defendants' breach of the Gila Bend Defendants' fiduciary  
12 duty of care to Kabins resulting in the Gila Bend Defendants' illegitimate profits, the Gila Bend  
13 Defendants hold the Gila Bend Defendants' illegitimate profits in constructive trust for Kabins.

14        669. The Gila Bend Defendants' conduct in breaching the Gila Bend Defendants' fiduciary  
15 duty of care to Kabins was malicious, fraudulent, and oppressive, and Kabins is thus entitled to  
16 punitive damages, in an amount subject to proof at trial.

17        670. Kabins has been required to retain attorneys to prosecute this action, and the Gila Bend  
18 Defendants are liable to Kabins for Kabins' attorneys' fees incurred in connection with the  
19 prosecution of this action. The Gila Bend Defendants could foresee the requirement for  
20 attorneys' fees in prosecuting the Gila Bend Defendants' breaches of the duty of care.

21        671. Kabins has incurred costs of suit in connection with bringing this action, and the Gila  
22 Bend Defendants are liable to Kabins for those costs of suit.

**TWENTY-SEVENTH CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTIES: DUTY OF CARE**

**(Against the Michael's Defendants)**

672. Plaintiffs incorporate, repeat and reallege all of the allegations set forth above.

673. The Michael's Defendants wasted Kabin's capital investment in Michael's by making numerous uninformed decisions, routinely ignoring obvious risks in a manner constituting gross negligence, and acting contrary to the best interests of the company in bad faith, while wasting Michael's assets.

674. The Chain Consortium, as *de facto* officers and directors of Michael's, are personally liable for breaching their fiduciary duty of care based on those individuals' intentional and unintentional misconduct, fraud, and knowing violations of the law, as alleged herein, in committing, as alleged herein, without limitation: (a) federal securities fraud under 17 C.F.R. §240.10b-5, (b) conspiracy to commit securities fraud, (c) control person liability for securities fraud under 15 U.S.C. §78t(a), (d) civil conspiracy, (e) concert of action, (f) aiding and abetting, (g) fraud in the inducement, (h) fraud in the execution or inception, (i) constructive fraud, (j) fraudulent concealment, (k) conversion, (l) Nevada securities fraud under NRS 90.660, (m) false pretenses under NRS 205.380, (n) negligent misrepresentation, (o) negligent performance of an undertaking, (p) negligence, (q) breach of contract, (r) breach of the duty of good faith and fair dealing, (s) violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §1963, (t) conspiracy to violate RICO, (u) racketeering under NRS 207.470, (v) unjust enrichment, and (w) promissory estoppel.

1       675. The Michael's Defendants further breached the fiduciary duty of loyalty to Kabins by  
2 engaging in multiple acts of self-dealing, misappropriation of Michaels' funds, and directing the  
3 affairs of Michael's for the Michael's Defendants' own self-interests and to the detriment of  
4 Kabins.

5       676. Kabins has sustained actual damages as a direct and proximate result of the breaches by  
6 the Michael's Defendants of the Michael's Defendants' fiduciary duty of care to Kabins, and the  
7 Michael's Defendants are liable to Kabins for the amount of those actual damages.

8       677. The Michael's Defendants have profited as a direct and proximate result of the  
9 Michael's Defendants' breaches of the Michael's Defendants' fiduciary duty of care to Kabins,  
10 and the Michael's Defendants are liable to Kabins for the amount of those profits.

11       678. Because of the Michael's Defendants' breach of the Michael's Defendants' fiduciary  
12 duty of care to Kabins resulting in the Michael's Defendants' illegitimate profits, the Michael's  
13 Defendants hold the Michael's Defendants' illegitimate profits in constructive trust for Kabins.

14       679. The Michael's Defendants could foresee the requirement for attorneys' fees in  
15 prosecuting the Michael's Defendants' breaches of the duty of care, and the Michael's  
16 Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of  
17 same.

18       680. The Michael's Defendants acted with malice, oppression, and intent to defraud Kabins,  
19 and Plaintiffs are accordingly entitled to an award of punitive damages for the Michael's  
20 Defendants' intentional misconduct.



**TWENTY-EIGHTH CAUSE OF ACTION**

**BREACH OF CONTRACT**

**(Against the 99th Defendants)**

681. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

682. The manager of 99th LLC, 99th Management, executed the 99th LLC Operating Agreement, including all amendments and exhibits.

683. The managers of 99th Management executed the 99th LLC Operating Agreement individually and on behalf of GEIII, Innovative, and as agents for 99th LLC and for the undisclosed principals of 99th LLC, specifically, the Chain Consortium and the Millennium Entities.

684. Kabins performed or was excused from performing all acts required of Kabins pursuant to the 99th LLC Operating Agreement.

685. The 99th Defendants failed to perform the 99th Defendants' obligations as provided for and arising out of the 99th LLC Operating Agreement.

686. As a result of the 99th Defendants' numerous breaches of the 99th LLC Operating Agreement, Kabins suffered substantial economic losses.

687. The 99th Defendants breached the contractual duty of good faith applicable to the 99th Defendants pursuant to §7.06 of the 99th LLC Operating Agreement, which provides that "[t]he Managing Member shall not be liable, responsible or accountable in damages or otherwise to the Company *or to the Members* for any act performed by the Managing Member, *provided such act is performed in good faith and without willful misconduct.*" (Emphasis added.) As such, all of the 99th Defendants' conduct giving rise to Kabins' claims for breaches of the fiduciary duties of

1 care and loyalty by the 99th Defendants, in combination with all of the other causes of action  
2 alleged herein, constitutes a material breach of the contractual duty of good faith.

3 688. The 99th Defendants breached the provisions of the 99th LLC Operating Agreement  
4 requiring that accurate and complete books and records be kept by the managing member, to be  
5 available for inspection and examination by the members or their representatives; that accurate  
6 financial reports be provided to the members as necessary for the preparation of the members'  
7 tax returns; and that meetings of the members be held at least annually.

8 689. The 99th Defendants have taken fees, and misappropriated funds, in excess of the  
9 compensation authorized for the 99th Defendants to receive, in breach of §7.04 of the 99th LLC  
10 Operating Agreement.

11 690. The 99th Defendants have engaged in extensive commingling of 99th LLC's funds with  
12 funds of other persons and entities, in breach of §7.08 of the 99th LLC Operating Agreement.

13 691. The 99th Defendants could foresee the requirement for attorneys' fees in prosecuting  
14 the 99th Defendants' breach of the 99th Operating Agreement, and the 99th Defendants are thus  
15 liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

16  
17 **TWENTY-NINTH CAUSE OF ACTION**

18 **BREACH OF CONTRACT**

19 **(Against the Benessere Defendants)**

20 692. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

21 693. The manager of Benessere, Benessere Management, executed the Benessere Operating  
22 Agreement, including all amendments and exhibits.

1       694. The managers of Benessere Management executed the Benessere Operating Agreement  
2 individually and on behalf of Innovative and as agents for Benessere and the undisclosed  
3 principals of Benessere, specifically, the Chain Consortium and the Millennium Entities.

4       695. Kabins performed or was excused of performing all acts required of Kabins pursuant to  
5 the Benessere Operating Agreement.

6       696. The Benessere Defendants failed to perform the Benessere Defendants' obligations as  
7 provided for and arising out of the Benessere Operating Agreement.

8       697. As a result of the Benessere Defendants' numerous breaches of the Benessere Operating  
9 Agreement, Kabins suffered substantial economic losses.

10       698. The Benessere Defendants breached the contractual duty of good faith applicable to the  
11 Benessere Defendants pursuant to §7.06 of the Benessere Operating Agreement, which provides  
12 that "[t]he Managing Member shall not be liable, responsible or accountable in damages or  
13 otherwise to the Company *or to the Members* for any act performed by the Managing Member,  
14 *provided such act is performed in good faith and without willful misconduct.*" (Emphasis  
15 added.) As such, all of the Benessere Defendants' conduct giving rise to Kabins' claims for  
16 breaches of fiduciary duty by the Benessere Defendants, in combination with all of the other  
17 causes of action alleged herein, constitutes a material breach of the contractual duty of good  
18 faith.

19       699. The Benessere Defendants breached the provisions of the Benessere Operating  
20 Agreement requiring that accurate and complete books and records be kept by the managing  
21 member, to be available for inspection and examination by the members or their representatives;  
22

1 that accurate financial reports be provided to the members as necessary for the preparation of the  
2 members' tax returns; and that meetings of the members be held at least annually.

3 700. The Benessere Defendants have taken fees, and misappropriated funds, in excess of the  
4 compensation authorized for the Benessere Defendants to receive, in breach of §7.04 of the  
5 Benessere Operating Agreement.

6 701. The Benessere Defendants have engaged in extensive commingling of Benessere's  
7 funds with funds of other persons and entities, in breach of §7.08 of the Benessere Operating  
8 Agreement.

9 702. Mr. Chain has transferred a portion of his membership interest in Benessere to Susan  
10 Licata, Dawn Meidinger and Christine Thornton, under unknown terms and conditions, without  
11 allowing the other Benessere members to exercise their rights of first refusal, in breach of §§8.01  
12 and 8.02 of the Benessere Operating Agreement.

13 703. The Benessere Defendants could foresee the requirement for attorneys' fees in  
14 prosecuting the Benessere Defendants' breach of the Benessere Operating Agreement, and the  
15 Benessere Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
16 result of same.

17  
18 **THIRTIETH CAUSE OF ACTION**

19 **BREACH OF CONTRACT**

20 **(Against the Capri Defendants)**

21 704. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.  
22

1       705. The manager of Capri I, Phoenix 83rd, executed the Capri I Operating Agreement,  
2 including all amendments and exhibits.

3       706. Mr. Gutzman, Mr. Martinez and the JLC Trust executed the Capri I Operating  
4 Agreement on behalf of Phoenix 83rd and as agents for Capri I and the undisclosed principals of  
5 Capri I, specifically, the Chain Consortium and the Millennium Entities.

6       707. Kabins performed or was excused from performing all requirements for Kabins pursuant  
7 to the Capri Operating Agreement.

8       708. The Capri Defendants failed to perform the Capri Defendants' obligations as provided  
9 for and arising out of the Capri I Operating Agreement.

10       709. As a result of the Capri Defendants' numerous breaches of the Capri I Operating  
11 Agreement, Kabins suffered substantial economic losses.

12       710. The Capri Defendants breached the contractual duty of good faith applicable to the  
13 Capri Defendants pursuant to §7.06 of the Capri I Operating Agreement, which provides that  
14 "[t]he Managing Member shall not be liable, responsible or accountable in damages or otherwise  
15 to the Company *or to the Members* for any act performed by the Managing Member, *provided*  
16 *such act is performed in good faith and without willful misconduct.*" (Emphasis added.) As  
17 such, all of the Capri Defendants' conduct giving rise to Kabins' claims for breaches of the  
18 fiduciary duties of care and loyalty by the Capri Defendants, in combination of all of the other  
19 causes of action alleged herein, constitutes a material breach of the contractual duty of good  
20 faith.

21       711. The Capri Defendants breached the provisions of the Capri I Operating Agreement  
22 requiring that accurate and complete books and records be kept by the managing member, to be

1 available for inspection and examination by the members or their representatives; that accurate  
2 financial reports be provided to the members as necessary for the preparation of the members'  
3 tax returns; and that meetings of the members be held at least annually.

4 712. The Capri Defendants have taken fees, and misappropriated funds, in excess of the  
5 compensation authorized for the Capri Defendants to receive, in breach of §7.04 of the Capri I  
6 Operating Agreement.

7 713. The Capri Defendants have engaged in extensive commingling of Capri I's funds with  
8 funds of other persons and entities, in breach of §7.08 of the Capri I Operating Agreement.

9 714. The Capri Defendants could foresee the requirement for attorneys' fees in prosecuting  
10 the Capri Defendants' breach of the Capri I Operating Agreement, and the Capri Defendants are  
11 thus liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

12  
13 **THIRTY-FIRST CAUSE OF ACTION**

14 **BREACH OF CONTRACT**

15 **(Against the Cipriani Defendants)**

16 715. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

17 716. Mr. Gutzman or Cipriani Management, or both, executed the Cipriani Operating  
18 Agreement, including all amendments and exhibits, individually and on behalf of Cipriani  
19 Management and as agents for Cipriani and the undisclosed principals of Cipriani, specifically,  
20 the Chain Consortium and the Millennium Entities.

21 717. Kabins performed or was excused from performing all acts required of Kabins pursuant  
22 to the Cipriani Operating Agreement.

1       718. The Cipriani Defendants failed to perform the Cipriani Defendants' obligations as  
2 provided for and arising out of the Cipriani Operating Agreement.

3       719. As a result of the Cipriani Defendants' numerous breaches of the Cipriani Operating  
4 Agreement, Kabins suffered substantial economic losses.

5       720. The Cipriani Defendants breached the contractual duty of good faith applicable to the  
6 Cipriani Defendants pursuant to § 7.06, of the Cipriani Operating Agreement, which provides  
7 that "[t]he Managing Member shall not be liable, responsible or accountable in damages or  
8 otherwise to the Company *or to the Members* for any act performed by the Managing Member,  
9 *provided such act is performed in good faith and without willful misconduct.*" (Emphasis  
10 added.) As such, all of the Cipriani Defendants' conduct giving rise to Kabins' claims for  
11 breaches of the fiduciary duties of care and loyalty by the Cipriani Defendants, in combination  
12 with all of the other causes of action alleged herein, constitutes a material breach of the  
13 contractual duty of good faith.

14       721. The Cipriani Defendants breached the provisions of the Cipriani Operating Agreement  
15 requiring that accurate and complete books and records be kept by the managing member, to be  
16 available for inspection and examination by the members or their representatives; that accurate  
17 financial reports be provided to the members as necessary for the preparation of the members'  
18 tax returns; and that meetings of the members be held at least annually.

19       722. The Cipriani Defendants have taken fees, and misappropriated funds, in excess of the  
20 compensation authorized for the Cipriani Defendants to receive, in breach of §7.04 of the  
21 Cipriani Operating Agreement.  
22

1 723. The Cipriani Defendants have engaged in extensive commingling of Cipriani's funds  
2 with funds of other persons and entities, in breach of §7.08 of the Cipriani Operating Agreement.

3 724. When the master limited-liability company was formed for Cipriani, Kabins' invested  
4 capital was blended with more recent investors' capital, thereby depriving Kabins of credit for  
5 unrealized appreciation, in violation of §7.03(Q) of the Cipriani Operating Agreement, which  
6 specifically required a "book-up" for unrealized appreciation.

7 725. Mr. Chain has transferred a portion of Mr. Chain's membership interest in Cipriani to  
8 Susan Licata and Christine Thornton, under unknown terms and conditions, without allowing the  
9 other members to exercise their rights of first refusal, in violation of §§8.01 and 8.02 of the  
10 Cipriani Operating Agreement.

11 726. The Cipriani Defendants could foresee the requirement for attorneys' fees in  
12 prosecuting the Cipriani Defendants' breach of the Cipriani Operating Agreement, and the  
13 Cipriani Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
14 result of same.

15  
16 **THIRTY-SECOND CAUSE OF ACTION**

17 **BREACH OF CONTRACT**

18 **(Against the Cottonwood Defendants)**

19 727. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

20 728. The managers of Cottonwood, Mr. Kammeyer and Mr. Povilaitis, executed the  
21 Cottonwood Operating Agreement, including all amendments and exhibits, individually and as  
22



1 agents for Cottonwood and the undisclosed principals of Cottonwood, specifically, the Chain  
2 Consortium and the Millennium Entities.

3 729. Kabins performed or was excused from performing all acts required of Kabins pursuant  
4 to the Cottonwood Operating Agreement.

5 730. The Cottonwood Defendants failed to perform the Cottonwood Defendants' obligations  
6 as provided for and arising out of the Cottonwood Operating Agreement.

7 731. As a result of the Cottonwood Defendants' numerous breaches of the Cottonwood  
8 Operating Agreement, Kabins suffered substantial economic losses.

9 732. The Cottonwood Defendants breached the contractual duty of good faith applicable to  
10 the Cottonwood Defendants pursuant to §7.06 of the Cottonwood Operating Agreement, which  
11 provides that "[t]he Managing Member shall not be liable, responsible or accountable in damages  
12 or otherwise to the Company *or to the Members* for any act performed by the Managing  
13 Member, *provided such act is performed in good faith and without willful misconduct.*"

14 (Emphasis added.) As such, all of the Cottonwood Defendants' conduct giving rise to Kabins'  
15 claims for breaches of the fiduciary duties of care and loyalty by the Cottonwood Defendants, in  
16 combination with all of the other causes of action alleged herein, constitutes a material breach of  
17 the contractual duty of good faith.

18 733. The Cottonwood Defendants breached the provisions of the Cottonwood Operating  
19 Agreement requiring that accurate and complete books and records be kept by the managing  
20 member, to be available for inspection and examination by the members or their representatives;  
21 that accurate financial reports be provided to the members as necessary for the preparation of the  
22 members' tax returns; and that meetings of the members be held at least annually.

1 734. The Cottonwood Defendants have engaged in extensive commingling of Cottonwood's  
2 funds with funds of other persons and entities, in breach of §7.08 of the Cottonwood Operating  
3 Agreement.

4 735. The Cottonwood Defendants could foresee the requirement for attorneys' fees in  
5 prosecuting the Cottonwood Defendants' breach of the Cottonwood Operating Agreement, and  
6 the Cottonwood Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein  
7 as a result of same.

8  
9 **THIRTY-THIRD CAUSE OF ACTION**

10 **BREACH OF CONTRACT**

11 **(Against the Gila Bend Defendants)**

12 736. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

13 737. GEIII or Innovative, or both, executed the Gila Bend Operating Agreement, including  
14 all amendments and exhibits, individually and on behalf of Modern Management and as agents  
15 for Gila Bend and the undisclosed principals thereof, specifically, the Chain Consortium and the  
16 Millennium Entities.

17 738. Kabins performed or was excused from performing all acts required of Kabins pursuant  
18 to the Gila Bend Operating Agreement.

19 739. The Gila Bend Defendants failed to perform the Gila Bend Defendants' obligations as  
20 provided for and arising out of the Gila Bend Operating Agreement.

21 740. As a result of the Gila Bend Defendants' numerous breaches of the Gila Bend Operating  
22 Agreement, Kabins suffered substantial economic losses.

1       741. The Gila Bend Defendants breached the contractual duty of good faith applicable to the  
2 Gila Bend Defendants pursuant to §7.06 of the Gila Bend Operating Agreement, which provides  
3 that “[t]he Managing Member shall not be liable, responsible or accountable in damages or  
4 otherwise to the Company *or to the Members* for any act performed by the Managing Member,  
5 *provided such act is performed in good faith and without willful misconduct.*” (Emphasis  
6 added.) As such, all of the Gila Bend Defendants’ conduct giving rise to Kabins’ claims for  
7 breaches of the fiduciary duties of care and loyalty by the Gila Bend Defendants, in combination  
8 with all of the other causes of action alleged herein, constitutes a material breach of the  
9 contractual duty of good faith.

10       742. The Gila Bend Defendants breached the provisions of the Gila Bend Operating  
11 Agreement requiring that accurate and complete books and records be kept by the managing  
12 member, to be available for inspection and examination by the members or their representatives;  
13 that accurate financial reports be provided to the members as necessary for the preparation of the  
14 members’ tax returns; and that meetings of the members be held at least annually.

15       743. The Gila Bend Defendants have taken fees, and misappropriated funds, in excess of the  
16 compensation authorized for the Gila Bend Defendants to receive, in breach of §7.04 of the Gila  
17 Bend Operating Agreement.

18       744. The Gila Bend Defendants have engaged in extensive commingling of Gila Bend’s  
19 funds with funds of other persons and entities, in breach of §7.08 of the Gila Bend Operating  
20 Agreement.

21       745. The Gila Bend Defendants could foresee the requirement for attorneys’ fees in  
22 prosecuting the Gila Bend Defendants’ breach of the Gila Bend Operating Agreement, and the

1 Gila Bend Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
2 result of same.

3  
4 **THIRTY-FOURTH CAUSE OF ACTION**

5 **BREACH OF CONTRACT**

6 **(Against the Michael's Defendants)**

7 746. Plaintiffs incorporate, repeat, and reallege all of the allegations set forth above.

8 747. Mr. Gutzman, Mr. Chain, and/or Modern Management executed the Michael's  
9 Operating Agreement, including all amendments and exhibits, individually and on behalf of  
10 Modern Management, and as agents for Michael's and for the undisclosed principals of  
11 Michael's, specifically, the Chain Consortium and the Millennium Entities.

12 748. Kabins performed or was excused from performing all acts required of Kabins pursuant  
13 to the Michael's Operating Agreement.

14 749. The Michael's Defendants failed to perform the Michael's Defendants' obligations as  
15 provided for and arising out of the Michael's Operating Agreements.

16 750. As a result of the Michael's Defendants' numerous breaches of the Michael's Operating  
17 Agreement, Kabins suffered substantial economic losses.

18 751. The Michael's Defendants breached the contractual duty of good faith applicable to the  
19 Michael's Defendants pursuant to §7.06 of the Michael's Operating Agreement, which provides  
20 that "no person...may receive indemnification hereunder or avoid liability therefore pursuant to  
21 this Section unless such person determined in good faith that such conduct was in the best  
22 interest of the Company, and so long as such conduct did not constitute fraud or misconduct."

1 As such, all of the Michael's Defendants' conduct giving rise to Kabins' claims for breaches of  
2 fiduciary duty by the Michael's Defendants, in combination with all of the other causes of action  
3 alleged herein, constitutes a material breach of the contractual duty of good faith.

4 752. The Michael's Defendants breached the provisions of the Michael's Operating  
5 Agreement requiring that accurate and complete books and records be kept by the managing  
6 member, to be available for inspection and examination by the members or their representatives;  
7 that accurate financial reports be provided to the members as necessary for the preparation of the  
8 members' tax returns; and that meetings of the members be held at least annually.

9 753. The Michael's Defendants have taken fees, and misappropriated funds, in excess of the  
10 compensation authorized for the Michael's Defendants to receive, in breach of §7.04 of the  
11 Michael's Operating Agreement.

12 754. The Michael's Defendants have engaged in extensive commingling of Michael's funds  
13 with funds of other persons and entities, in breach of §7.08 of the Michael's Operating  
14 Agreement.

15 755. The Michael's Defendants could foresee the requirement for attorneys' fees in  
16 prosecuting the Michael's Defendants' breach of the Michael's Operating Agreement, and the  
17 Michael's Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
18 result.

**THIRTY-FIFTH CAUSE OF ACTION**

**BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

**(Against the 99th Defendants)**

756. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

757. Kabins' relationship with the 99th Defendants was governed by contracts, including, without limitation, the 99th Operating Agreement.

758. Kabins performed or was excused from performing all, or substantially all, of the acts required of Kabins by the 99th Operating Agreement.

759. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by performing and/or failing to perform the 99th Defendants' duties under the 99th Operating Agreement in bad faith and in a manner inconsistent with the purpose of the 99th Operating Agreement.

760. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by violating Kabins' justified expectations that the 99th Defendants would preserve Kabins' invested capital and that the 99th Defendants would work diligently to achieve the purpose of the 99th Operating Agreement.

761. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by making the Distribution Misrepresentation in the expectation that Kabins would rely on the Distribution Misrepresentation, and then failing or refusing to abide by the Distribution Misrepresentation.

1       762. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly  
2 interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by  
3 interfering with Kabins' ability to receive Kabins' share of profits from 99th LLC.

4       763. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly  
5 interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by diluting  
6 Kabins' principal investment by taking substantial up-front fees and incurring excessive  
7 expenses.

8       764. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly  
9 interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by failing  
10 to disclose material information to Kabins regarding the 99th Defendants' negotiations for the  
11 purchase of membership interests in 99th LLC and the value potential buyers were willing to pay  
12 for membership interests in 99th LLC.

13       765. The 99th Defendants, individually and as agents for the other 99th Defendants, unfairly  
14 interfered with Kabins' right to receive the benefits of the 99th Operating Agreement by  
15 engaging in further conduct giving rise to the additional causes of action against the 99th  
16 Defendants alleged herein.

17       766. As a result of the 99th Defendants' unfair interference with Kabins' right to receive the  
18 benefits of the 99th Operating Agreement, Kabins sustained actual damages, in an amount to be  
19 proven at trial, and the 99th Defendants are liable to Kabins for those actual damages.

20       767. The 99th Defendants could foresee the requirement for attorneys' fees in prosecuting  
21 the 99th Defendants' breach of the duty of good faith and fair dealing, and the 99th Defendants  
22 are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

**THIRTY-SIXTH CAUSE OF ACTION**

**BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

**(Against the Benessere Defendants)**

768. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

769. Kabins' relationship with the Benessere Defendants was governed by contracts, including, without limitation, the Benessere Operating Agreement.

770. Kabins performed or was excused from performing all, or substantially all, of the acts required of Kabins by the Benessere Operating Agreement.

771. The Benessere Defendants, individually and as agents for the other Benessere Defendants, unfairly interfered with Kabins' right to receive the benefits of the Benessere Operating Agreement by performing and/or failing to perform the Benessere Defendants' duties in bad faith and in a manner inconsistent with the purpose of the Benessere Operating Agreement.

772. The Benessere Defendants, individually and as agents for the other Benessere Defendants, unfairly interfered with Kabins' right to receive the benefits of the Benessere Operating Agreement by violating Kabins' justified expectations that the Benessere Defendants would preserve Kabins' invested capital and that the Benessere Defendants would work diligently to achieve the purpose of the Benessere Operating Agreement.

773. The Benessere Defendants, individually and as agents for the other Benessere Defendants, unfairly interfered with Kabins' right to receive the benefits of the Benessere Operating Agreement by making the Distribution Misrepresentation in the expectation that



1 Kabins would rely on the Distribution Misrepresentation, and then failing or refusing to abide by  
2 the Distribution Misrepresentation.

3 774. The Benessere Defendants, individually and as agents for the other Benessere  
4 Defendants, unfairly interfered with Kabins' right to receive Kabins' share of profits from  
5 Benessere LLC.

6 775. The Benessere Defendants, individually and as agents for the other Benessere  
7 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Benessere  
8 Operating Agreement by diluting Kabins' principal investment by taking substantial up-front  
9 fees and incurring excessive expenses.

10 776. The Benessere Defendants, individually and as agents for the other Benessere  
11 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Benessere  
12 Operating Agreement by failing to disclose material information to Kabins regarding the  
13 Benessere Defendants' negotiations for the purchase of membership interests in Benessere and  
14 the value potential buyers were willing to pay for membership interests in Benessere.

15 777. The Benessere Defendants, individually and as agents for the other Benessere  
16 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Benessere  
17 Operating Agreement by engaging in further conduct giving rise to all of the causes of action  
18 alleged herein.

19 778. As a result of the Benessere Defendants' unfair interference with Kabins' right to  
20 receive the benefits of the Benessere Operating Agreement, Kabins sustained actual damages, in  
21 an amount to be proven at trial, and the Benessere Defendants are liable to Kabins for those  
22 actual damages.

1 779. The Benessere Defendants could foresee the requirement for attorneys' fees in  
2 prosecuting the Benessere Defendants' breach of the duty of good faith and fair dealing, and the  
3 Benessere Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
4 result of same.

5  
6 **THIRTY-SEVENTH CAUSE OF ACTION**

7 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

8 **(Against the Capri Defendants)**

9 780. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

10 781. Kabins' relationship with the Capri Defendants was governed by contracts, including,  
11 without limitation, the Capri I Operating Agreement.

12 782. Kabins performed, or was excused from performing, all or substantially all of the acts  
13 required of Kabins by the Capri I Operating Agreement.

14 783. The Capri Defendants, individually and as agents for the other Capri Defendants,  
15 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
16 by performing and/or failing to perform the Capri Defendants' duties in bad faith and in a  
17 manner inconsistent with the purpose of the Capri I Operating Agreement.

18 784. The Capri Defendants, individually and as agents for the other Capri Defendants,  
19 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
20 by violating Kabins' justified expectations that the Capri Defendants would preserve Kabins'  
21 invested capital and that the Capri Defendants would work diligently to achieve the purpose of  
22 the Capri I Operating Agreement.

1       785. The Capri Defendants, individually and as agents for the other Capri Defendants,  
2 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
3 by making the Distribution Misrepresentation in the expectation that Kabins would rely on the  
4 Distribution Misrepresentation, and then failing or refusing to abide by the Distribution  
5 Misrepresentation.

6       786. The Capri Defendants, individually and as agents for the other Capri Defendants,  
7 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
8 by unfairly interfering with Kabins' right to receive the benefits of any profits from Capri I.

9       787. The Capri Defendants, individually and as agents for the other Capri Defendants,  
10 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
11 by diluting Kabins' principal investment by taking substantial up-front fees and incurring  
12 excessive expenses.

13       788. The Capri Defendants, individually and as agents for the other Capri Defendants,  
14 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
15 by failing to disclose material information to Kabins regarding negotiations for the purchase of  
16 membership interests in Capri I and the value potential buyers were willing to pay for  
17 membership interests in Capri I.

18       789. The Capri Defendants, individually and as agents for the other Capri Defendants,  
19 unfairly interfered with Kabins' right to receive the benefits of the Capri I Operating Agreement  
20 by engaging in further conduct giving rise to the additional causes of action against the Capri  
21 Defendants alleged herein.  
22

1 790. As a result of the Capri Defendants' unfair interference with Kabins' right to receive the  
2 benefits of the Capri I Operating Agreement, Kabins sustained actual damages, in an amount to  
3 be proven at trial, and the Capri Defendants are liable to Kabins for those actual damages.

4 791. The Capri Defendants could foresee the requirement for attorneys' fees in prosecuting  
5 the Capri Defendants' breach of the duty of good faith and fair dealing, and the Capri Defendants  
6 are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

7  
8 **THIRTY-EIGHTH CAUSE OF ACTION**

9 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

10 **(Against the Cipriani Defendants)**

11 792. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

12 793. Kabins' relationship with the Cipriani Defendants was governed by contracts, including,  
13 without limitation, the Cipriani Operating Agreement.

14 794. Kabins performed or was excused from performing all, or substantially all, of the acts  
15 required of Kabins by the Cipriani Operating Agreement.

16 795. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
17 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
18 by performing and/or failing to perform the Cipriani Defendants' duties in bad faith and in a  
19 manner inconsistent with the purpose of the Cipriani Operating Agreement.

20 796. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
21 violated Kabins' justified expectations that the Cipriani Defendants would preserve Kabins'  
22

1 invested capital and that the Cipriani Defendants would work diligently to achieve the purpose of  
2 the Cipriani Operating Agreement.

3 797. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
4 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
5 by making the Distribution Misrepresentation in the expectation that Kabins would rely on the  
6 Distribution Misrepresentation, and then failing or refusing to abide by the Distribution  
7 Misrepresentation.

8 798. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
9 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
10 by interfering with Kabins' ability to receive Kabins' share of profits from Cipriani LLC.

11 799. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
12 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
13 by diluting Kabins' principal investment by taking substantial up-front fees and incurring  
14 excessive expenses.

15 800. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
16 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
17 by taking up-front fees despite the Cipriani Defendants' representations to Kabins that the  
18 Cipriani Defendants would not do so.

19 801. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
20 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
21 by failing to disclose material information to Kabins regarding negotiations for the purchase of  
22

1 membership interests in Cipriani and the value potential buyers were willing to pay for  
2 membership interests in Cipriani.

3 802. The Cipriani Defendants, individually and as agents for the other Cipriani Defendants,  
4 unfairly interfered with Kabins' right to receive the benefits of the Cipriani Operating Agreement  
5 by engaging in further conduct giving rise to the additional causes of action against the Cipriani  
6 Defendants alleged herein.

7 803. As a result of the Cipriani Defendants' unfair interference with Kabins' right to receive  
8 the benefits of the Cipriani Operating Agreement, Kabins sustained actual damages, in an  
9 amount to be proven at trial, and the Cipriani Defendants are liable to Kabins for those actual  
10 damages.

11 804. The Cipriani Defendants could foresee the requirement for attorneys' fees in  
12 prosecuting the Cipriani Defendants' breach of the duty of good faith and fair dealing, and the  
13 Cipriani Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
14 result of same.

15  
16 **THIRTY-NINTH CAUSE OF ACTION**

17 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

18 **(Against the Cottonwood Defendants)**

19 805. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

20 806. Kabins' relationship with the Cottonwood Defendants was governed by contracts,  
21 including, without limitation, the Cottonwood Operating Agreement.  
22

1 807. Kabins performed or was excused from performing all, or substantially all, of the acts  
2 required of Kabins by the Cottonwood Operating Agreement.

3 808. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
4 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
5 Operating Agreement by performing and/or failing to perform the Cottonwood Defendants'  
6 duties under the Cottonwood Operating Agreement in bad faith and in a manner inconsistent  
7 with the purpose of the Cottonwood Operating Agreement.

8 809. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
9 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
10 Operating Agreement by violating Kabins' justified expectations that the Cottonwood  
11 Defendants would preserve Kabins' invested capital and that the Cottonwood Defendants would  
12 work diligently to achieve the purpose of the Cottonwood Operating Agreement.

13 810. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
14 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
15 Operating Agreement by making the Distribution Misrepresentation in the expectation that  
16 Kabins would rely on the Distribution Misrepresentation, and then failing or refusing to abide by  
17 the Distribution Misrepresentation.

18 811. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
19 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
20 Operating Agreement by interfering with Kabins' ability to receive Kabins' share of profits from  
21 Cottonwood.  
22

1       812. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
2 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
3 Operating Agreement by diluting Kabins' principal investment by taking substantial up-front  
4 fees and incurring excessive expenses.

5       813. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
6 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
7 Operating Agreement by failing to disclose material information to Kabins regarding  
8 negotiations for the purchase of membership interests in Cottonwood and the value potential  
9 buyers would be willing to pay for membership interests in Cottonwood.

10       814. The Cottonwood Defendants, individually and as agents for the other Cottonwood  
11 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Cottonwood  
12 Operating Agreement by engaging in further conduct giving rise to the additional causes of  
13 action alleged herein.

14       815. As a result of the Cottonwood Defendants' unfair interference with Kabins' right to  
15 receive the benefits of the Cottonwood Operating Agreement, Kabins sustained actual damages,  
16 in an amount to be proven at trial, and the Cottonwood Defendants are liable to Kabins for those  
17 actual damages.

18       816. As a result of the Cottonwood Defendants unfair interference with Kabins' right to  
19 receive the benefits of the Cottonwood Operating Agreements, Kabins sustained special  
20 damages, including, but not limited to, damages arising from Kabins' based on the Cottonwood  
21 Operating Agreements and fraudulent misrepresentations and material omissions, in an amount  
22 not yet fully ascertained to be proven at trial.



1 817. The Cottonwood Defendants could foresee the requirement for attorneys' fees in  
2 prosecuting the Cottonwood Defendants' breach of the duty of good faith and fair dealing.  
3 Kabins has been required to retain attorneys to prosecute this action, and the Cottonwood  
4 Defendants are liable to Kabins for Kabins' attorneys' fees and costs incurred in connection with  
5 the prosecution of this action.

6  
7 **FORTIETH CAUSE OF ACTION**

8 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

9 **(Against the Gila Bend Defendants)**

10 818. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

11 819. Kabins' relationship with the Gila Bend Defendants was governed by contracts,  
12 including, without limitation, the Gila Bend Operating Agreement.

13 820. Kabins performed or was excused from performing all, or substantially all, of the acts  
14 required of Kabins by the Gila Bend Operating Agreement.

15 821. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
16 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend  
17 Operating Agreement by performing and/or failing to perform the Gila Bend Defendants' duties  
18 under the Gila Bend Operating Agreement in bad faith and in a manner inconsistent with the  
19 purpose of the Gila Bend Operating Agreement.

20 822. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
21 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend  
22 Operating Agreement by violating Kabins' justified expectations that the Gila Bend Defendants

1 would preserve Kabins' invested capital and that the Gila Bend Defendants would work  
2 diligently to achieve the purpose of the Gila Bend Operating Agreement.

3 823. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
4 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend  
5 Operating Agreement by making the Distribution Misrepresentation in the expectation that  
6 Kabins would rely on the Distribution Misrepresentation, and then failing or refusing to abide by  
7 the Distribution Misrepresentation.

8 824. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
9 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend  
10 Operating Agreement by interfering with Kabins' ability to receive Kabins' share of profits from  
11 Gila Bend.

12 825. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
13 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend  
14 Operating Agreement by diluting Kabins' principal investment by taking substantial up-front  
15 fees and incurring excessive expenses.

16 826. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
17 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend  
18 Operating Agreement by failing to disclose material information to Kabins regarding  
19 negotiations for the purchase of membership interests in Gila Bend and the value potential  
20 buyers would be willing to pay for membership interests in Gila Bend.

21 827. The Gila Bend Defendants, individually and as agents for the other Gila Bend  
22 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Gila Bend

1 Operating Agreement by engaging in further conduct giving rise to the additional causes of  
2 action alleged herein.

3 828. As a result of the Gila Bend Defendants' unfair interference with Kabins' right to  
4 receive the benefits of the Gila Bend Operating Agreement, Kabins sustained actual damages, in  
5 an amount to be proven at trial, and the Gila Bend Defendants are liable to Kabins for those  
6 actual damages.

7 829. The Gila Bend Defendants could foresee the requirement for attorneys' fees in  
8 prosecuting the Gila Bend Defendants' breach of the duty of good faith and fair dealing, and the  
9 Gila Bend Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
10 result of same.

11  
12 **FORTY-FIRST CAUSE OF ACTION**

13 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

14 **(Against the Michael's Defendants)**

15 830. Plaintiff incorporates, repeats, and realleges all the allegations set forth above.

16 831. Kabins' relationship with the Michael's Defendants was governed by contracts,  
17 including, without limitation, the Michael's Operating Agreement.

18 832. Kabins performed or was excused from performing all, or substantially all, of the acts  
19 required of Kabins by the Michael's Operating Agreement.

20 833. The Michael's Defendants, individually and as agents for the other Michael's  
21 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's  
22 Operating Agreement by performing and/or failing to perform the Michael's Defendants' duties

1 under the Michael's Operating Agreement in bad faith and in a manner inconsistent with the  
2 purpose of the Michael's Operating Agreement.

3 834. The Michael's Defendants, individually and as agents for the other Michael's  
4 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's  
5 Operating Agreement by violating Kabins' justified expectations that the Michael's Defendants  
6 would preserve Kabins' invested capital and that the Michael's Defendants would work  
7 diligently to achieve the purpose of the Michael's Operating Agreement.

8 835. The Michael's Defendants, individually and as agents for the other Michael's  
9 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's  
10 Operating Agreement by making the Distribution Misrepresentation in the expectation that  
11 Kabins would rely on the Distribution Misrepresentation, and then failing or refusing to abide by  
12 the Distribution Misrepresentation.

13 836. The Michael's Defendants, individually and as agents for the other Michael's  
14 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's  
15 Operating Agreement by interfering with Kabins' ability to receive Kabins' share of profits from  
16 Michael's.

17 837. The Michael's Defendants, individually and as agents for the other Michael's  
18 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's  
19 Operating Agreement by diluting Kabins' principal investment by taking substantial up-front  
20 fees and incurring excessive expenses.

21 838. The Michael's Defendants, individually and as agents for the other Michael's  
22 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's

1 Operating Agreement by failing to disclose material information to Kabins regarding  
2 negotiations for the purchase of membership interests in Michael's and the value potential buyers  
3 were willing to pay for membership interests in Michael's.

4 839. The Michael's Defendants, individually and as agents for the other Michael's  
5 Defendants, unfairly interfered with Kabins' right to receive the benefits of the Michael's  
6 Operating Agreement by engaging in further conduct giving rise to the additional causes of  
7 action alleged herein.

8 840. As a result of the Michael's Defendants' unfair interference with Kabins' right to  
9 receive the benefits of the Michael's Operating Agreement, Kabins sustained actual damages, in  
10 an amount to be proven at trial, and the Michael's Defendants are liable to Kabins for those  
11 actual damages.

12 841. The Michael's Defendants could foresee the requirement for attorneys' fees in  
13 prosecuting the Michael's Defendants' breach of the duty of good faith and fair dealing, and the  
14 Michael's Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a  
15 result of same.

16  
17 **FORTY-SECOND CAUSE OF ACTION**

18 **FEDERAL RACKETEERING UNDER 18 U.S.C. §1962**

19 **(Against All Defendants)**

20 842. Plaintiffs incorporate, repeat, and reallege all the allegations set forth above.

21 843. The Enterprise comprises individuals and entities associated in fact to defraud Kabins.  
22

1 844. The Enterprise is an enterprise engaged in, and the activities of which affect, interstate  
2 commerce.

3 845. Defendants, as “persons” within the meaning of 18 U.S.C. §1961(3), through a pattern  
4 of racketeering activity, acquired and maintained, directly or indirectly, an interest in and/or  
5 control of the Enterprise in violation of 18 U.S.C. §1962(c).

6 846. The Defendants engaged in at least two predicate acts of “racketeering activity,” in the  
7 form of securities fraud, wire fraud, and mail fraud, as defined in 18 U.S.C. §1961(1) and as  
8 described in detail *supra*, which predicate acts occurred within ten (10) years of one another,  
9 constituting a pattern of racketeering activity under 18 U.S.C. §1961(5).

10 847. Each member of the Enterprise assented to the plan of the conspiracy created by the  
11 Chain Consortium and the Millennium Entities to commit predicate acts of securities fraud in  
12 violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

13 848. The Enterprise’s pattern of racketeering activity threatens to continue indefinitely into  
14 the future, or at least so long as Kabins owns interests in any of the Millennium Entities.

15 849. Kabins was injured in Kabins’ respective business and property by reason of  
16 Defendants’ violations of 18 U.S.C. §1962 in that, as a direct and proximate result of  
17 Defendants’ acts, Kabins suffered damages, including lost income and property value, based on a  
18 conservative return on investment, equaling, at a minimum, \$13,600,000, in a total amount to be  
19 determined by the trier of fact.

20 850. By reason of Defendants’ violations of 18 U.S.C §1962, Kabins is entitled to three times  
21 the damages Kabins sustained, plus pre- and post-judgment interest at the statutory rate, pursuant  
22 to 18 U.S.C. §1964(c).

1 851. Kabins has been required to retain attorneys to prosecute this action, and Defendants are  
2 liable to Kabins for Kabins' attorneys' fees and costs incurred in connection with the prosecution  
3 of this action.

4  
5 **FORTY-THIRD CAUSE OF ACTION**

6 **CONSPIRACY TO VIOLATE RICO**

7 **(Against All Defendants)**

8 852. Kabins incorporates, repeats, and realleges all the allegations set forth above.

9 853. The Enterprise Defendants objectively manifested the Enterprise Defendants' agreement  
10 to participate in a racketeering enterprise through the commission of two or more predicate acts  
11 of racketeering activity in violation of 18 U.S.C. §1962(d).

12 854. Kabins was injured in Kabins' respective business and property by reason of the  
13 Enterprise Defendants' conspiracy to violate 18 U.S.C. §1962(d) and, as a direct and proximate  
14 result of the Enterprise Defendants' acts, Kabins suffered damages, including lost income and  
15 property value, based on a conservative return on investment, equaling, at a minimum,  
16 \$13,600,000, in a total amount to be determined by the trier of fact.

17 855. By reason of the Enterprise Defendants' conspiracy to violate 18 U.S.C §1962, Kabins  
18 is entitled to three times the damages Kabins sustained, plus pre- and post-judgment interest at  
19 the statutory rate pursuant to 18 U.S.C. §1964(c).

20 856. Kabins has been required to retain attorneys to prosecute this action, and Defendants are  
21 liable to Kabins for Kabins' attorneys' fees and costs incurred in connection with the prosecution  
22 of this action.

**FORTY-FOURTH CAUSE OF ACTION**

**RACKETEERING UNDER NRS 207.470**

**(Against All Defendants)**

857. Kabins incorporates, repeats, and realleges all the allegations set forth above.

858. Defendants have engaged in at least two crimes related to racketeering, including, without limitation, multiple instances of securities fraud in violation of NRS 90.570 as described fully *supra*, after July 1, 1983, with Kabins as the victim and otherwise interrelated by distinguishing characteristics, with all such crimes taking place within the same five-year period.

859. The individual Defendant entities' officers, directors, and managers personally authorized, directed, or participated in each company's crimes related to racketeering.

860. Kabins was injured in Kabins' respective business and property by reason of Defendants' violations of NRS 207.410 in that, as a direct and proximate result of Defendants' acts, Kabins suffered damages, including lost income and property value in an amount to be determined at trial.

861. By reason of Defendants' violations of NRS 207.390, Kabins is entitled, pursuant to NRS 207.390, to three times the damages Kabins sustained as a result of Defendants' racketeering activity, plus pre- and post-judgment interest at the statutory rate.

862. Kabins has been required to retain attorneys to prosecute this action, and Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of same.



**FORTY-FIFTH CAUSE OF ACTION**

**UNJUST ENRICHMENT**

**(Against All Defendants)**

863. Kabins incorporates, repeats, and realleges all the allegations set forth above.

864. Kabins conferred upon Defendants a benefit of at least \$11 million of respective invested funds, which Defendants accepted, retained, and enjoyed to Kabins' detriment.

865. Defendants misappropriated, commingled, and inappropriately disbursed Kabins' invested capital, resulting in unjust enrichment to the Defendants.

866. Kabins was injured as a direct and proximate result of Defendants' acts, including lost income and property in an amount to be determined at trial.

867. Defendants could foresee the requirement for attorneys' fees in prosecuting Defendants' unjust enrichment, and Defendants are thus liable for Kabins' attorneys' fees and costs incurred herein as a result of same.

**FORTY-SIXTH CAUSE OF ACTION**

**PROMISSORY ESTOPPEL**

**(Against All Defendants)**

868. Kabins incorporates, repeats, and realleges all the allegations set forth above.

869. Defendants knew that Kabins' respective investments would be subject to extremely high risks.

870. The Defendants undertook extraordinary measures to ensure the Kabins believed that Kabins' principal would not be subject to high risks, including routine mailings of K-1 tax

1 statements and other financial statements incorrectly reflecting undiminished value in Kabins'  
2 principal and incorrectly stating that Mr. Chain's Guaranty would protect Kabins against all  
3 losses.

4 871. Kabins was not aware of the true nature of the high risks associated with the Millennium  
5 Investment Companies because Kabins relied on the Inducement Misrepresentations and on Mr.  
6 Chain's Guaranty.

7 872. Kabins' detrimental reliance on Mr. Chain's Guaranty constitutes consideration with  
8 respect to Mr. Chain's Guaranty.

9 873. Defendants made representations and gave assurances to Kabins, upon which  
10 Defendants intended for Kabins to rely, to Kabins' detriment.

11 874. Kabins was injured in Kabins' business and property by reason of Defendants' acts  
12 giving rise to a claim for promissory estoppel in that, as a direct and proximate result of  
13 Defendants' acts, Kabins suffered damages, including lost income and property in an amount to  
14 be determined at trial.

15 875. Defendants could foresee the requirement for attorneys' fees in prosecuting Defendants'  
16 breached promises to Kabins, and Defendants are thus liable for Kabins' attorneys' fees and  
17 costs incurred herein as a result of same.

18  
19 **PRAYER FOR RELIEF**

20 Kabins prays for judgment against Defendants as follows:

- 21 1. For general damages, in an amount in excess of \$75,000.00, to be proven at trial;  
22

- 1       2. For treble damages with respect to Defendants' RICO violations, in an amount to be  
2       proven at trial;
  - 3       3. For special damages, in an amount to be proven at trial;
  - 4       4. For punitive or exemplary damages pursuant to NRS 42.001 and 42.005, based on  
5       Defendants' malice, oppression, and fraud, in an amount to be determined by the trier of  
6       fact;
  - 7       5. For rescission of each of the Operating Agreements and other investment contracts  
8       associated with the Millennium Investment Companies, and recovery of Kabins' capital  
9       investments upon tender of the consideration Kabins received for Kabins' capital;
  - 10      6. For imposition of a constructive trust on Defendants for the benefit of Kabins with  
11      respect to, at a minimum, all of Kabins' respective invested capital and additional  
12      damages, in an amount to be determined at trial; and for preliminary and permanent  
13      injunctive or other equitable relief, or both, with respect to such imposition of  
14      constructive trust;
  - 15      7. For attorneys' fees and costs of suit incurred herein;
  - 16      8. For pre- and post-judgment interest as allowed by law;
  - 17      9. For further relief pursuant to 15 U.S.C. 78a *et seq.*, 18 U.S.C. §1964, NRS 90.660, NRS  
18      207.390 and NRS 207.400 *et seq.* as this Court may deem proper; and
  - 19      10. For any other relief this Court may deem proper.
- 20  
21  
22

**DEMAND FOR JURY TRIAL**

Kabins hereby requests trial by jury on all causes of action set forth in this Complaint.

Dated this twenty-third day of June, 2009.

GIBSON LOWRY BURRIS LLP

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